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BENEFICIARY @ ASSIGNMENT

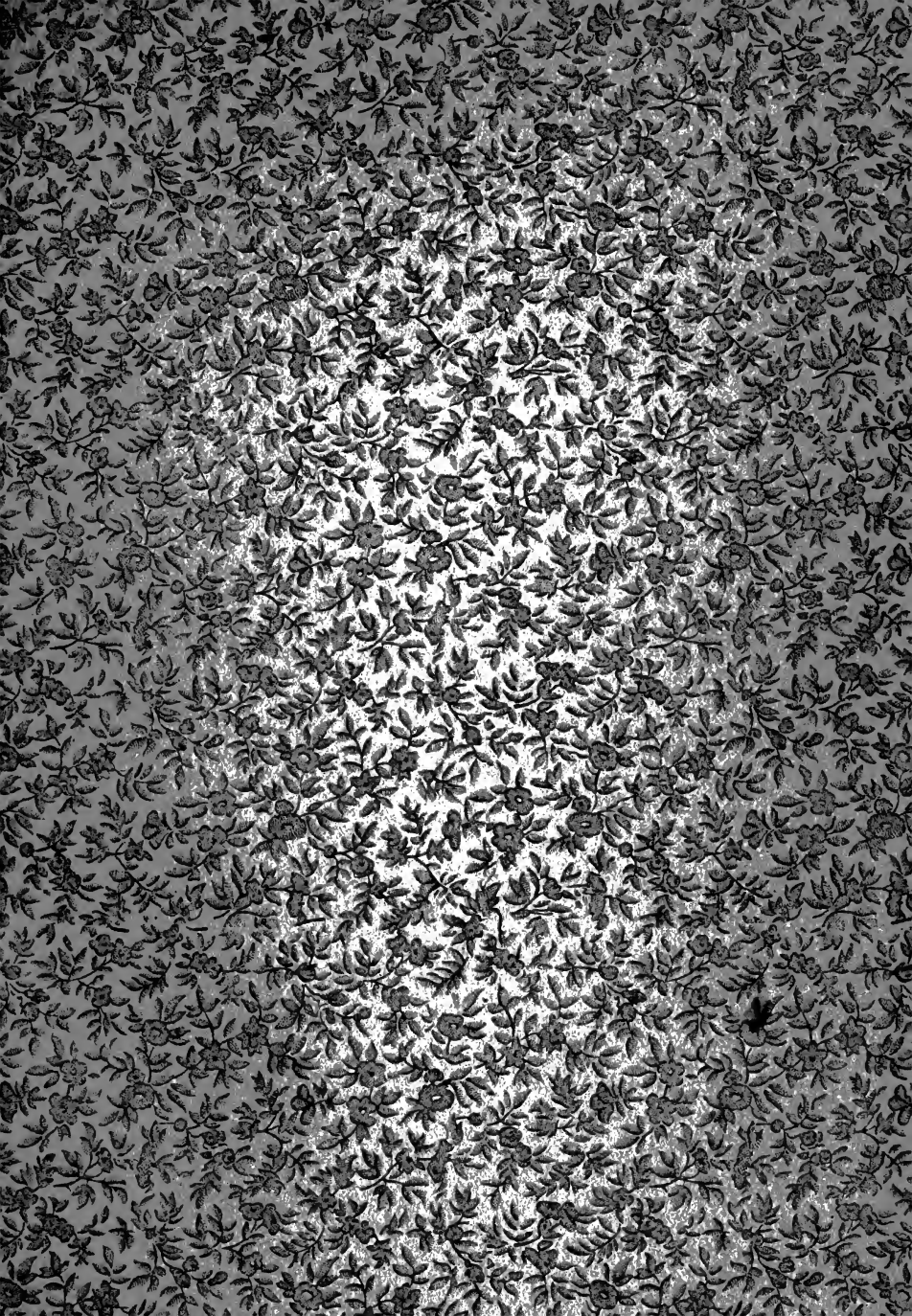
By CHARLES W. FRICKE

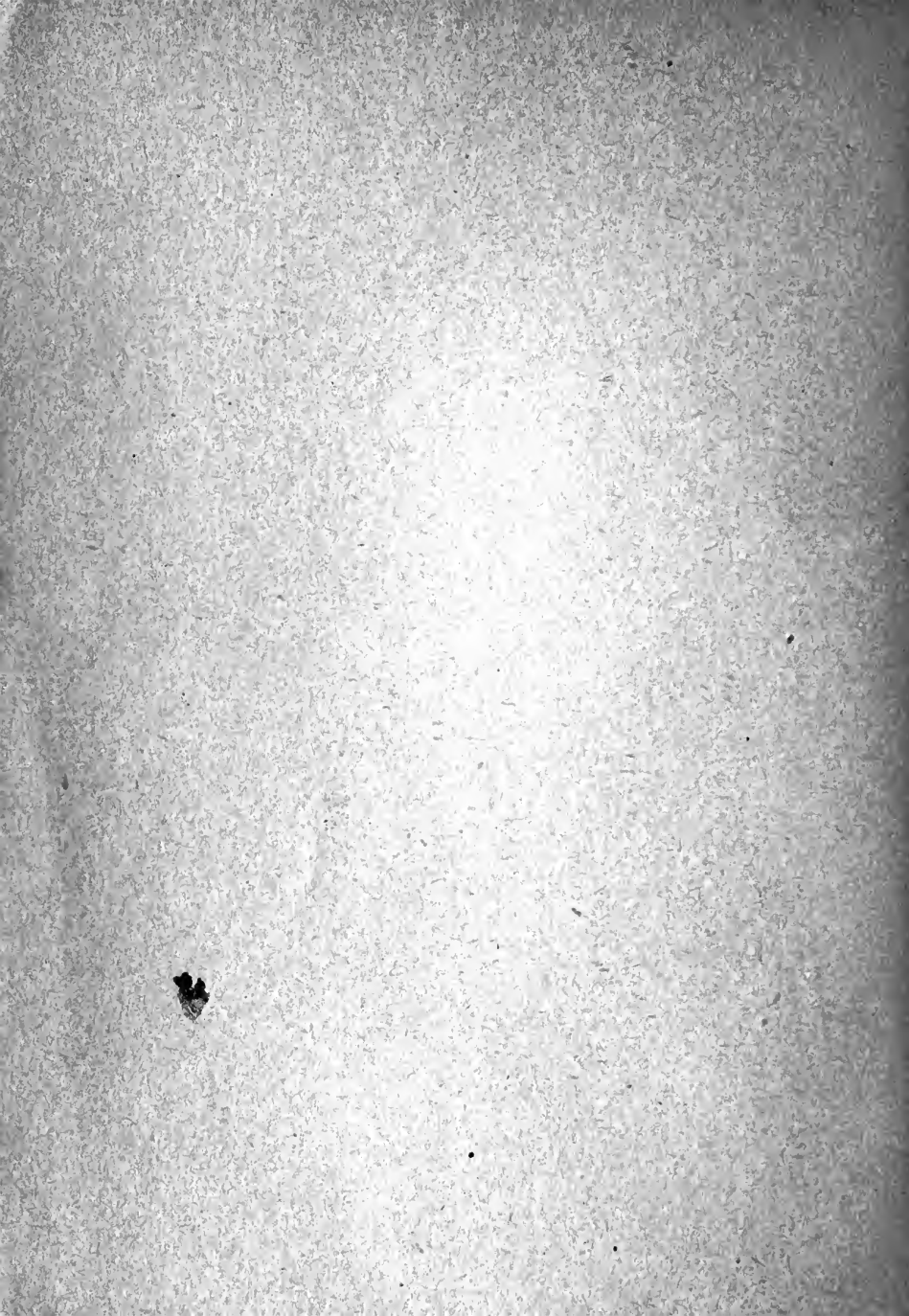


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The
Law of Life Insurance
In Re
Beneficiary and Assignment

BY
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BENEFICIARY.

No questions relating to life insurance have so frequently been before the courts, as those arising out of the designation of the beneficiary, and the assignment of the contract of insurance.

Within the last half century, at least one-half the life insurance questions presented to attorneys, either for the claimants, or for the Company, or Mutual Benefit Society, involved the question as to whom payment of the proceeds of a matured policy or certificate should be made.

Upon the maturity of a contract of life insurance, two questions arise:—to whom are the proceeds payable, and, if payable to more than one person, in what manner are they to be divided. The liability of the insurer, and the interests involved and affected by such liability arising under the contract of insurance, make a correct interpretation of its conditions, and the statutory laws applicable thereto, of the greatest moment to the business of life insurance.

A contract of life insurance is an agreement whereby one of the parties, the insurer, in consideration of a certain sum of money, called the premium, undertakes to pay a certain larger sum of money upon the death of the person whose life is insured, to the payee under the terms of the contract. The payee mentioned in the contract is called the beneficiary. An endowment policy differs from the ordinary life policy, in that, if

The CONTRACT.

*The Beneficiary
Endowment
Policy*



the insured outlives a given period of years, the proceeds of the policy become payable to him, and the beneficiary's interest in the policy terminates.

Beneficiary may sue on the Contract.

Even when not one of the contracting parties, the beneficiary may bring an action against the insurer on the contract (1). Payment by the insurer to a person not entitled to the proceeds, does not prevent the beneficiary from bringing an action against the insurer for the amount of the claim (52 N. E., 750), but the beneficiary has no cause of action against the parties to whom the insurer paid the amount, as they have not assumed to act for him or to take the money for his use.

Payment to a person not entitled.

INSURABLE INTEREST,
What insurable interest is.

The primary requisite for a valid contract of insurance is, that there must be an insurable interest. Generally speaking, an insurable interest may be said to be such an interest which one person has in the life of another, as would create a desire for the continuance of such life. There must be a reasonable ground, founded upon the relation of the parties to expect some benefit or advantage from the continuance of the life insured. Although often asserted that mere relationship gives an insurable interest, it will be noted that in the cases holding relationship a sufficient ground for insurable interest, there has always been present some liability for support, or sufficient foundation for an insurable interest, independent of the mere relationship. Where relationship involves a reasonable claim to support or some other material benefit or advantage to be derived from the continuance of the life insured, there is sufficient to constitute an insurable interest. Our courts have at various times held that a wife has an insurable interest in

Mere relationship not sufficient.

Must be a pecuniary interest.

the life of her husband (114); a husband in the life of his wife (115); a partner in the life of his co-partner (116); a creditor in the life of his debtor (14); a bondsman in the life of him whose surety he is (117), and in the life of his fellow bondsman (118); a tenant in the life of his landlord if the landlord has only a life estate (119); a master in the life of his servant under contract for a term of years (120); a servant in the life of his master (121); children in the lives of their parents (122); but brothers and sisters have no insurable interest in the lives of one another (123). It does not follow however, that whenever one of the relations mentioned above exists, that there exists an insurable interest. Mere relationship gives no insurable interest. There must be present a pecuniary interest or the person seeking to establish his insurable interest must show that he was dependent upon the insured for support. (2). At Common Law, there was no necessity for insurable interest (3), but this was changed by the statute 14 Geo., III., c48, which made an interest in the life insured essential. It is now firmly settled, both in England and this country, that where some person, other than the insured, takes out the insurance, the beneficiary must have an insurable interest, or the contract will be void as against public policy. (4).

Common Law Rule.

Policy taken out by some person other than the insured.

When we come to those cases in which a person takes out insurance on his own life, we meet a conflict of decisions as to the necessity of the beneficiary having an insurable interest. It is firmly settled that every person has an insurable interest in his own life, and in New York, and a large number of States, it is held that where a per-

Policies taken out by the insured.

Insurable interest in own life.

*Prevailing
Rule.*

son takes out insurance on his own life, and the contract is not a mere cover for a speculation or wager contravening the general policy of the law, he may make any one he chooses the beneficiary of such insurance, subject to the terms of the contract, and, even though the beneficiary has no insurable interest in the life insured, the contract is valid and the beneficiary may recover the proceeds due at the maturity of the contract. (5).

*Contrary
Jurisdictions.*

In the United States Courts, however, and in a few of the States, the beneficiary is always required to have an insurable interest, even where the insurance is taken out by the insured. (6). In quite a recent case in the State of Texas (27 S. W., 286), where the policy was taken out by the insured, lack of insurable interest was held, not to avoid the policy, but that the beneficiary held as trustee for those legally entitled to the proceeds. The cases of Warnock vs. Davis (104 U. S., 775) and Cammack vs. Lewis (15 Wall, 643), are generally cited as holding that in all instances the beneficiary must have an insurable interest. This question was not squarely before the court, for the transactions in both cases were clearly wagering contracts, and the New York courts would also have declared them void as against public policy.

*Necessity of
insurable
interest.*

Where the insurance is taken out by some person other than the insured, the beneficiary should in every instance be compelled to have an insurable interest, for to hold otherwise, would be to throw open the doors to transactions for the mere purpose of speculating upon human life, and the attendant dangers of fraud and even murder. Careful consideration of the subject cannot

fail to convince, that where a man in good faith insures his life, the insurable interest which he has in his own life is sufficient to make the contract a binding and valid one, and that the beneficiary need have no insurable interest. If the courts attack such insurance upon the ground that it is against public policy for any person to have a greater desire for the death, rather than the life of another, is there not as much ground for saying that devises and bequests, life tenancies, dower and curtesy, are contrary to public policy? In answer to those who may contend that the testator may revoke his will, and that this distinguishes the character of the two transactions, it is sufficient to say, that with but very few exceptions, all the life insurance companies and mutual benefit societies now doing business in this country, are making insurance contracts which give the insured as great a right to change the beneficiary, as the testator has to change his devisee or legatee.

A contract of life insurance is not a contract of indemnity, and an insurable interest, when required, need be present only at the inception of the contract, and termination of such interest has no effect upon the validity of the contract. (7). The case of *Godsall vs. Boldero*, 9 East 72, decided by Lords Mansfield and Ellenborough, held that a beneficiary could not recover upon a policy after his insurable interest had ceased. This case, which proceeded upon the theory that the contract was one of indemnity, has been overruled by *Dalby vs. Assurance Co.*, 15 C. B., 365, and the subsequent cases, and is not now the law, either in England or the United States.

INSURANCE
CONTRACT NOT
ONE OF
INDEMNITY.

*Termination of
Insurable
Interest.*

WHO MAY BE
A BENEFICIARY.

IN REGULAR
LIFE
INSURANCE.

IN MUTUAL
BENEFIT
INSURANCE.

*Beneficiaries
must be within
certain Classes.*

While the question as to who may be the beneficiary may depend largely on the question, whether the proposed beneficiary has an insurable interest, still there are in some cases other limitations on the right to be a beneficiary. In the regular life insurance companies, there is no requirement with which the beneficiary need comply other than that of insurable interest. In the case of mutual benefit insurance the law is somewhat different, for the charter, constitution. or by-laws of the society, and the statutes of most of the States, limit the persons who may be the beneficiaries under the certificate to certain classes. Those to whom mutual benefit certificates may be payable, are generally, the husband, wife, family, blood relatives, affianced husband or affianced wife, or such persons as may be dependent upon the member of the society for support.

*Designation of
Beneficiary not
within pre-
scribed class—
to whom the
proceeds will be
paid.*

*Construction of
Charter and
By-Laws.*

These restrictions upon the right of a member of a mutual benefit society to make any one a beneficiary, arise from the very nature of these organizations, for their primary object is to afford protection to the family or dependents of the members; consequently, where the member designates as his beneficiary one who is not within the prescribed class, the designation is invalid and ineffective, and the benefit is payable to such person or persons who would have taken, had no designation ever been made. (8), The charter and by-laws will however, be liberally construed, so as to carry out the benevolent character of the organization, so long as such construction does not violate the statute law, or contravene public policy. (9).

On the other hand, statutes must be strictly com-

plied with, and are subject to the rules of statutory construction. Statutes passed after the organization of a mutual benefit society, enlarging the class of persons eligible to beneficiaryship, need not be formally adopted by the society. (10).

Compliance with Statutes.

Enlarging Statutes.

Statutes restricting the beneficiaries of mutual benefit societies to certain classes, cannot affect a certificate in force prior to its enactment. (11).

Restrictive Statutes—their effect upon existing contracts.

“A corporation cannot by stipulations in its contract avoid or withdraw the operation of a statute of the place where it does business.”

13 Fed. R. 528.—101 Cal. 627.

There have been a few decisions (53 Ark. 255-84 Ia. 734), which hold that where the society has known that the designated beneficiary is not within the eligible class, that there has been a waiver by the society of the usual requirements. The Arkansas decision may be accounted for by the fact that in that State there is no statutory requirement as to beneficiaries, while in the Iowa decision the restricting statute was passed after the issuance of the certificate.

Waiver by Society of requirements.

The question frequently arises as to whom the society is liable upon the death of an insured member, when the beneficiary designated is not within the prescribed class, or when no beneficiary has been designated.

Absence of valid designation of Beneficiary.

The charter, by-laws, or constitution of a mutual benefit society usually provide how and to whom the proceeds of a matured certificate shall be paid in default of a valid designation of a beneficiary. The designation of a beneficiary in a mutual benefit certificate is an act testamentary in

Designation is of a testamentary nature.

its character and the same rules of construction apply as in other testamentary writings. (12).

It has therefore often been held, that where there is no valid designation of a beneficiary at the death of the insured, the benefit lapses and the society is liable to no one, (13), but these cases depend rather upon the peculiar wording of the charter, by-laws, constitution, or certificate. Forfeitures are only enforced when it is the plain intent of the contract that they shall be; provisions relied upon to authorize a forfeiture are construed most strongly against the insurer, and when they are repugnant, the courts will enforce those which will prevent a forfeiture.

*Society held
liable to no
one.*

Contrary rule.

There can be no doubt, especially in the light of the later cases (102 Mich., 23; 60 N. W., 445; 112 N. Y., 627), and the attitude of the Courts toward forfeitures, that in the absence of express forfeiture provisions in the contract, an action can be maintained by the administrator of the insured to recover the proceeds where there has been no provision made, either by the insured or the society, for payment of the benefits in the event of the absence of a valid designation of beneficiary.

CREDITOR AS
PAYEE.

It is unusual for a member of a mutual benefit society to make the certificate payable to his creditor, but a large number of contracts in regular life insurance companies are made payable, assigned to, or taken out by, the insured's creditors. There is no doubt but that a creditor has an insurable interest in the debtor's life; (14), but the questions arise as to the amount of insurance which may be made payable to the creditor, how much of this amount the creditor may hold as his own, and what effect,

*Creditor has
insurable
interest in life
of debtor.*

if any, payment of the debt has upon the right of the creditor to share in the proceeds.

If the amount of the insurance is so far in excess of the debt, with interest, plus the expense of carrying the insurance, as to indicate an intent of the creditor to speculate upon the life of the debtor, the policy is void (15). In the well known case of Cammack vs. Lewis (15 Wall, 643), the policy was in the amount of \$3,000, of which \$2,000 was payable to Cammack to secure a debt of \$70. The policy was procured at the instigation of Cammack, and while not made directly payable to him, was assigned to him by Lewis. The court declared the assignment void, and held that Cammack was only entitled to the amount of the debt out of the fund collected.

Wagers are void—insurance must not be greatly in excess of the debt.

The mere fact that the proceeds of the policy exceed the amount of the debt, with interest and premiums, will not render the policy invalid or prevent the creditor from retaining the entire amount of the policy. Thus, in Rittler vs. Smith, 70 Md., 261, where the debt was about \$1,000, and the insurance received by the creditor was \$2,124.82, and in Amick vs. Butler, 111. Ind., 578, where the debt was \$600, and the proceeds received by the creditor amounted to \$2,000, the creditor was held to be entitled to the excess over the debt and premiums.

Proceeds in excess of debt, interest and premiums.

Some jurisdictions, seemingly with the idea that a policy of life insurance is a contract of indemnity, have decided, that even though the insured had taken out the policy and made it payable to the creditor, such creditor might hold as his own, only so much of the proceeds of

Amount of proceeds the creditor beneficiary may hold as his own.

Rights of Creditor when not a payee.

IN MUTUAL
BENEFIT
INSURANCE.
*Not a part of member's estate.
Exempting Statutes.*

IN REGULAR
LIFE
INSURANCE.

Policy payable to insured or his estate.

Premiums paid in fraud of creditors.

Wife's Policy Laws.

the policy as would pay the debt with interest and the cost of the insurance up to the time of the insured's death, but the better rule is, that the creditor is entitled to the entire proceeds of a policy in which he is the beneficiary, unless there has been a breach of the law against wagering contracts (16).

No small part of the questions arising in life insurance litigation, involve the rights of creditors against life insurance contracts of which they are neither the beneficiaries nor the assignees. As a general rule, the fund payable on the death of a member of a mutual benefit society is not a part of his estate and subject to his debts (17). Statutes have been passed in many of the States, exempting the proceeds of a benefit certificate from legal or equitable process, for the debts of the member or his beneficiary (18). Policies in life insurance companies are frequently the subjects of the attacks of creditors. A policy payable to the insured, his estate, or his executor or administrator, may independent of statute, be proceeded against by his creditor as a part of the insured's estate.

Where premiums are paid in fraud of creditors, or a policy is taken out by the insured while insolvent, the creditors may claim the proceeds or the premiums thus fraudulently paid, in the absence of a statute to the contrary (19), even though the policy was by its terms payable to some third person.

Statutes have been enacted in many of the States which protect, to a certain extent, the interests of a wife, or wife and children, in a policy upon the life of a husband and father, even though

the policy was taken out by the insured and premiums paid while insolvent. (20) The New York statute permits a married woman, in her own name or in the name of a third person, with his consent as her trustee, to cause the life of her husband to be insured for her benefit, and when such married woman is living at the maturity of the policy, she is entitled to receive the insurance money according to the terms of the policy, free from the claims of the creditors or representatives of her husband, except where the premium actually paid annually out of the husband's property exceeds \$500; that portion of the insurance money which is purchased by the excess of premium above \$500, is primarily liable for the debts of the husband. The policy may also provide, that in the event of the wife dying before the maturity of the policy, without disposing of it, it shall be payable to her husband or his, her, or their children, or to or for the use of one or more of such persons, and it may also designate trustees for such child or children, to receive and manage the proceeds until they attain full age.

*The New York
Statute.*

An obvious defect in this statute is, that it affords protection from creditors only in those cases in which the wife causes the life of her husband to be insured, and does not cover insurance payable to the wife, taken out by the husband of his own accord.

Other State statutes provide that the wife's interest in any policy on the life of her husband shall be free from the claims of creditors or representatives of the insured, except that the amount of insurance purchased by premium paid out of the husband's estate, in excess of that allowed by stat-

*Other State
Statutes.*

ute, is subject to the husband's debts. In some statutes, the creditor's rights can only be enforced against the amount of the premiums paid in excess of the premium mentioned in the statute. In Pennsylvania it is held (99 Pa. St., 133), that where a person takes out a policy on his own life, in the name and for the benefit of his family or dependent relatives, their title is not subject to his debts, and even the question of fraud cannot be raised.

Alabama Law.

Under the Alabama Code, Sec. 2733, a policy on the life of the husband, payable to the wife and children, was held not subject to the claims of the creditors, and solvency or insolvency of the husband when the premiums were paid, did not affect the policy; (56 Ala., 333), but in a subsequent case, (76 Ala., 199), annual premiums in excess of \$500, were held liable for the husband's debts. It is also the law in Alabama, that where the wife predeceases the husband, his creditors take precedence over her "heirs and representatives," to whom the policy is made payable, in the event of her death. (87 Ala., 263.)

When creditors may step in.

Endowment Policies payable to married women.

While it has been held (21), that an endowment policy is not within these exemptions, such decisions are not in line with the letter or intent of the statutes, and in the light of better considered cases are wrong on principle. The wife's interest in such policies is vested and subject only to be defeated by the husband's surviving the endowment period.

Policy assigned to a married woman.

Unless specially provided by statute, the exemptions in favor of a wife's policy do not apply when the policy was originally payable to some one else and then assigned to her. (22) The proceeds of a

statutory "wife's policy" are not exempt from the claims of her creditors, in the absence of express statutory provision. (23) In a recent case, in 138 N. Y., 369, a wife's policy was purchased with funds misappropriated by the insured husband, and it was held that the proceeds could be proceeded against and recovered for the benefit of the firm from which the funds were wrongfully taken, and this decision would, no doubt, be followed in most States.

Creditors of beneficiary of wife's policy.

Policy purchased with misappropriated funds.

Where a policy is payable to the wife and children, or to the wife with a reversion to the children, the wife's creditors can proceed only against the rights of the wife under the policy, and her failure to survive the insured, in most cases terminates any rights she, or any person claiming under her, may have had during her lifetime.

Policy payable to wife and children.

Section 70a 5, of the United States Bankruptcy Act of 1898, provides, in substance, that where the cash surrender value of any policy is payable to the bankrupt or his estate, he may pay or secure to the trustees in bankruptcy, the amount of such cash surrender value, and hold the policy free from the claims of all creditors participating in the distribution of the estate in bankruptcy; if this be not done, the policy will pass to the trustees as assets. (24) The same act also provides that the trustee shall become vested with the title of the bankrupt to all property which could be transferred, and in Section 6, it is provided that the bankrupt's right under the State exemption laws shall not be affected. These two provisions do not refer or apply to insurance policies. (25)

BANKRUPTCY OF INSURED OR BENEFICIARY.

U. S. BANKRUPTCY ACT.

Where policy has a cash surrender value payable to the bankrupt.

Let us first consider policies having a cash surrender value payable to the bankrupt at the time the petition is filed. Such policies will undoubtedly pass to the trustee unless the debtor can claim the protection of some State law, exempting such policy from liability for his debts. Can he claim this protection?

Congress, in passing this bankruptcy law, gave to debtors the benefit of State exemption laws, but this (Sec. 6), is qualified by Section 70a5, in which specific provision is made for insurance policies in which the bankrupt has an interest, and in like manner, that part of the United States Bankruptcy Act which gives to the trustee all property which could be transferred is also qualified by Section 70a5. If it be claimed that Section 6, and the section relating to transferrable property, apply to insurance policies, what was the need of inserting any specific reference to insurance policies in this Act? Because it was the intent and purpose of Congress to limit the previous sections of the Act, and to provide that *all* policies having a cash surrender value, and *only such*, should pass to the trustee, and the express provision for insurance policies, is the only portion of the Act which applies to insurance policies. If, therefore, a State law gives to a bankrupt any greater protection than is afforded by that part of Section 70a5, of the Federal Act, which makes express provision for insurance policies, there is a conflict of statutes, and when there is a conflict between State and Federal enactments, there can be no doubt which will prevail, for it is expressly provided in the Constitution of the United States that

"the laws of the United States * * * shall be the supreme law of the land."

It was not necessary to enact that part of Section 70a which makes specific reference to insurance policies, if this section was intended merely to supplement the previous sections, for there can be no doubt, even in the absence of Section 70a5, that a policy having a cash surrender value payable to a bankrupt, would pass to the trustee. Could not the bankrupt even in the absence of Section 70a5, retain his policy by paying or securing to the trustee the amount of cash surrender value? The policy, by reason of its cash value to the bankrupt, would certainly pass to the trustee, but the trustee has, at the time of its passing to him, only such rights as the bankrupt himself had, and therefore, even in the absence of Section 70a5, all that the trustee would be entitled to would be the cash surrender value at that time, and by paying the amount of such value, the bankrupt could retain the policy as his own.

What disposition shall be made of a policy on the life of a bankrupt, payable to some person other than himself? We can reach no conclusion but that as the beneficiary has a vested interest in the policy, the insured is not entitled to surrender it for cash, and hence the bankruptcy of the insured will not enable his trustee to claim or surrender it. Going one step further, let us suppose the policy contained a clause allowing the insured to change the beneficiary, without the consent of the then beneficiary. Would such a policy pass to the trustee? It is contended that it would not, unless the policy had at the time a cash surrender value pay-

*Policy payable
to third person.*

able to the bankrupt. The mere fact that this clause was inserted in the policy, does not entitle the insured to compel a surrender of the policy for cash, for the beneficiary has an interest in the policy—an interest vested and subject only to be divested by a subsequent change—and the beneficiary's consent would have to be obtained for the surrender of the policy, or the beneficiary would have to be changed so as to make the policy payable to the insured, before the insurer could safely purchase the policy.

Endowment Policies.

Payable to bankrupt.

When bankrupt is not the beneficiary.

Definition and analysis of an Endowment Policy.

Let us now turn our attention to Endowment policies. If the proceeds, both before and after the endowment period are payable to the insured bankrupt, there can be no doubt but that the policy will pass to the trustee, if it has any cash surrender value. Suppose that in the event of the death of the insured prior to the end of the endowment period, the proceeds of the policy as a death claim are payable to some person as beneficiary, and let us suppose further, that the insured has not transferred any of his rights to the proceeds of the policy as an endowment. What, if anything, will pass to the trustee of the bankrupt insured?

An endowment policy is, in effect, a combination of two contracts:—one, a contract to insure a life for a term of years equal to the endowment period, the insurance being payable to the beneficiary only in the event of the death of the insured prior to the end of such term of years; the other, a contract of pure endowment, which is a contract by which the insurer agrees to pay to the insured a certain sum of money, at the end of a given period of years, if the insured is then living. Thus we see that in an

endowment policy, we have two contingent interests. The interest of the beneficiary is contingent upon the insured dying before the end of the endowment period; the interest of the insured is contingent upon his surviving such period. The insured cannot surrender the policy for cash, because the beneficiary has an interest which cannot be defeated without his consent; neither could the trustee of a bankrupt surrender an endowment policy on the life of such bankrupt, for the trustee can have no more rights than the insured himself had. If the insured is entitled to any cash surrender value at all, his right is conditional and terminates upon his death prior to the end of the endowment period. In order to protect whatever rights he may have to a cash surrender value, the trustee would have to continue paying premiums out of the bankrupt estate, and even though he did pay the premiums, the insured might die before the endowment period expired, and the trustee would be entitled to nothing, except perhaps, a lien against the proceeds of the policy as a death claim for the amount of premium paid by him, with interest. It is contended that an interest so contingent in its nature, would not pass to the trustee, and it is doubted whether the trustee would have authority to pay premiums upon such a mere contingency, when such payment may result in no benefit to the bankrupt estate. (26) Where, however, all the premiums have been paid, and the policy is about to mature, it is possible that the trustee would be entitled to the policy, for here the trustee need go to no expense to maintain the policy, and there is but the possibility that the insured will die before the policy

matures as an endowment. Such a case must, however, be considered an exception to the general proposition herein contended for. The addition of a "Change of Beneficiary Clause" to an endowment policy, would not give the trustee any greater rights than if the contract had been an ordinary life policy.

There have been but few decisions by the Courts upon the United States Bankruptcy Act of 1898 since its enactment, but even in the few decisions which have been handed down, there is an irreconcilable conflict, and for this reason judicial interpretations have been entirely omitted from this discussion.

The evident intent and meaning of the Bankruptcy Act is, that when the bankrupt himself is entitled to the cash surrender value of a policy of life, or any other form of insurance, then, and then only, will the policy pass to the trustee, unless the bankrupt avails himself of the option to pay or secure to the trustee the amount of such cash surrender value. (27)

WORDS USED TO
DESIGNATE THE
BENEFICIARY.

"Heirs, executors, administrators or assigns."

"Estate."

Courts are frequently called upon to interpret the specific words used in the insurance contract to designate the beneficiary. The words "heirs, executors, administrators, or assigns," when used in the payee clause of a policy of life insurance, are to be construed as meaning that the policy is payable to the insured or his estate, and upon the death of the insured, claim to the proceeds may be made by his executor or administrator. The proceeds of a policy so payable (28), or one expressly made payable to the "estate" (29), go to the executor or administrator as general assets; the proceeds may be

bequeathed, and are liable for the debts of the deceased.

Where a policy is payable to the "heirs" of the insured, it has been almost universally held that the fund goes to those entitled to share in the personality of the deceased, under the statute of distribution (30), who take, however, not by virtue of the statute, but as purchasers who are ascertained by the provisions of such statute. The proceeds of a policy so payable cannot, therefore, be considered as a part of the estate of the insured and subject to his debts.

"Heirs."

Take as purchasers.

Many of the policies issued some years ago have been made payable to the insured's "legal representatives." It has been held (26 N. E., 464) that those whom the insured intended to take, under such designation, were entitled to the proceeds, but this decision cannot be binding upon any case other than that which was then before the court. These words in their strict legal sense, mean executor or administrator, and they will be so construed, unless there are facts showing that these words were not used in their ordinary sense. (31).

"Legal Representatives."

The words "if living," in a beneficiary clause, refer to the beneficiary's living at the maturity of the policy, and not to the time when the contract had its inception. (32).

"If living."

Where the rights of a beneficiary depend upon his surviving either the insured or another beneficiary, and both of the parties perish in a common disaster, the proceeds will be distributed as if the conditional beneficiary had died first, unless those claiming under such beneficiary can prove his survivorship. There is no presumption of survivor-

Survivorship.

Death in a Common Disaster.

No presumption of survivorship.

ship, and the burden of proof rests upon the party asserting survivorship and whose rights depend upon it. (33).

"As his interest may appear."

Under a policy to the beneficiary "as his interest may appear," such beneficiary can recover and hold as his own, only so much of the proceeds as his interest in the life insured actually amounts to at the maturity of the contract.

"Relatives."

"Relatives," a frequent designation of the beneficiaries of a mutual benefit certificate, includes relatives by marriage as well as by blood (34), but it does not include an illegitimate child. (35).

"Dependents."

When the insurance proceeds are made payable to the "dependents" of the insured, the term is to be strictly construed and confined to those who are actually dependent upon the insured for support. (36). The term does not include a creditor (37), nor a concubine (38), even though literally dependent, but a woman who in good faith lives with a man, believing herself to be his wife, although there has been no legal marriage, is a dependent within the meaning of the term. (39).

"Wife."

It would hardly seem necessary to call upon the courts to determine to whom the proceeds of a policy payable to the "wife," should be paid, but it is not at all unusual for a life insurance company to receive proofs of death and claim to the proceeds, from more than one "wife." Thus oftentimes, the companies are met with claims to the proceeds of the same policy or certificate by a divorced wife, and the wife of a second marriage.

Divorce.

In the case of a regular life insurance policy, divorce does not terminate the right of the divorced wife to the proceeds (40); but in the case of mutual

benefit insurance, divorce (except *a mensa et thoro* (41)), causes the wife to lose her interest in a certificate payable to a "wife" or "widow," or where beneficiaries are limited to the heirs or family of the insured. (42). The word "wife," in a mutual benefit certificate, ordinarily includes only the lawful wife of the member in case she survives him (43), but, in 44 Ill., 188 (see also 53 N. Y. Supp., 622), where one Bachman took out a certificate payable "to his wife, Cecelia Bachman," it was held that the said Cecelia, although merely his affianced wife, was entitled to the benefit on the ground that she was the person intended as the beneficiary, and was as his fiancée, eligible to beneficiaryship in the society. In regular life insurance policies a designation of the "wife" of the insured as the beneficiary, without any designation by name, can only mean the then lawful wife of the insured and such wife, unless the contract otherwise provides, will take a vested interest.

"Wife."

Insurance payable to the "widow" of the insured is payable to the wife who survives him (44); the fact that the insured married his surviving wife after the insurance was taken out does not change this rule.

"Widow."

No small part of the insurance in force at the present day is payable to the wife and children of the insured, and the question often arises, to what share of the proceeds is each of the beneficiaries entitled? The weight of authority is, that the beneficiaries share equally, unless the proportions are specified (45), but there are a few decisions (46) which hold that the shares of the beneficiaries are to be determined according to the statute of distri-

"Wife and Children."

Distribution of Proceeds.

*"Husband and Children."
Distribution of Proceeds.*

*"Child" or "Children."
Does not include Grand-child or Grand-children.
Exceptions.*

*Death of Child beneficiary.
Policy payable to "Children."*

In Regular Life Insurance

In Mutual Benefit Insurance.

Adopted child.

Children born subsequent to consummation of contract.

butions. Policies in which the husband and children of the insured are named as beneficiaries, are very few in number, but the decision in 40 S. W., 686, to the effect that such beneficiaries take per capita, will undoubtedly be followed in most States.

It may be laid down as a general rule, that the words "child" or "children," do not include a grandchild, or grandchildren (47), although there are decisions to the contrary in a few States (48). There are, however, two exceptions to this rule; first, where the writing would be inoperative if strictly construed, and second, where the context shows that the word was not used in its ordinary meaning, but in a more extended sense.

While in some jurisdictions the word "children" does not include grandchildren, it does not follow that where a child, one of the beneficiaries under the policy payable to the children of the insured, dies, that its interest either reverts to the insured or vests in the surviving children. If the insurance be in a regular life insurance company, the beneficiary has a vested interest in the policy and this interest will go to the deceased child's administrator or executor (56)-(62)-86). In the mutual benefit cases, where beneficiaries are held to have rights in the chose in action similar to joint tenants with the right of survivorship (85) the rule is obviously different.

Where the circumstances show that he was intended to be a beneficiary, an adopted child will take under a policy payable by its terms to the children of the insured (49).

Under a designation of the "children" of the insured as beneficiaries, a child born subsequent to



the consummation of the contract, will be included (50); but where the insurance is payable to the children by name, a child born subsequent to such designation has no right to share in the proceeds (51).

Where the beneficiaries designated are the "children" of the insured, the designation includes children of the insured by a former or subsequent wife of the insured (52), but it does not include children of the wife by a former husband (53).

A policy or certificate payable to the wife of the insured and "their children" should, from the very meaning of the words used, include only such children as are common to the husband and wife; and the courts will so hold, unless a clear intent to the contrary, on the part of the insured, be shown (54).

The particular designations of beneficiaries, dealt with in the foregoing paragraphs, include the most common methods, outside of designations of beneficiaries by name, by which the insured points out to whom he wishes the insurance moneys paid. The insurance solicitor should be instructed to warn the prospective insurant against all designations not clearly setting forth the intent, and the entire intent of the insured, as to whom the proceeds of his policy or certificate shall be payable at the maturity of the contract.

Having designated a beneficiary, it frequently becomes important for the insured or the insurer to determine the interest the beneficiary has in the certificate or policy of insurance. The interest may be either vested, contingent, or conditional, according to the particular form of words used in the beneficiary clause. The interest of the beneficiary

"Children" includes all children of insured. Does not include children of wife by former husband. "Their Children," Wife and.

INTEREST
OF THE
BENEFICIARY.

Death of insured gives beneficiary a vested interest.

Regular Life Policy—vested interest if insured cannot change the Beneficiary.

Where insured may change the beneficiary.

CONTRACT
BETWEEN
INSURED AND
BENEFICIARY.

is, however, often the subject of judicial construction where no conditions or words of limitation are used in the beneficiary clause. In such cases we must look not only to the express words designating the payee, but to the intent and effect of the entire agreement. It is well settled, that in the absence of a provision in the contract to the contrary, the right of the beneficiary becomes vested immediately upon the death of the insured (55). In a regular life insurance policy, the beneficiary upon the issuance of the policy acquires a vested interest therein, which cannot be impaired without his consent (56). This rule does not include such policy contracts as contain what is known as the "Change of Beneficiary Clause," which allows the insured to change the beneficiary in the manner, and subject to the conditions, set forth in the clause. Where the contract permits the insured to change the beneficiary at will and without the consent of the then beneficiary, it is settled beyond a doubt that the interest of a beneficiary of such a contract is not absolutely vested (57). The interest of a beneficiary in a life insurance policy permitting a change of beneficiary is but little less than a vested interest, and may be described as an interest vested, but subject to be defeated by a valid change.

It has been suggested that where a person became a member of a mutual benefit association, under an agreement with the proposed beneficiary that the beneficiary should pay all assessments, and they were so paid, the beneficiary acquired a vested interest, and that the member lost his right to change the beneficiary (58), but the proposition is

a very doubtful one, and some of the States have express statutory provisions to the effect that no such contract can take from the member his right to change the beneficiary.

The mere possession by a beneficiary of a benefit certificate or policy, does not of itself take away from the insured any rights which he may have of changing the beneficiary (59). The vested rights of minor children cannot be affected by a surrender of a regular life policy to the company, even though their consent is obtained (60).

So many policies are made payable to the "wife, and in the event of her prior death, to the children" of the insured, that it becomes highly important to determine the interests of the children. The interests of the children, as well as those of the wife, are vested, but conditional (61). The interest of the wife is conditional upon her surviving the insured; the interests of the children are conditional upon the death of the mother before the maturity of the contract, and upon her death all interest in the policy vests in the children who survive her, and upon the death of one of the surviving children, his interest becomes payable to his executor or administrator (62). See cases in (84).

The question of the rights of the beneficiaries also arises where the policy has been wrongfully surrendered to the company, and a new policy issued in substitution of the old one. In cases of this nature, the rights of the beneficiaries of the original policy are not affected (63), unless there has been a valid change of the beneficiary in the meantime.

The question now arises: can the rights or in-

Possession of policy or certificate does not give beneficiary a vested interest.

Vested rights of minors—surrender of policy.

Policies to "wife and, in the event of her prior death, to the children." Interests vested, but conditional.

Death of wife.

Death of child.

Surrender of policy in which the beneficiary has a vested interest.

terests of a beneficiary be affected by acts or occurrences following, in point of time, the designation of such beneficiary?

So general a query can only be answered by dealing separately with the various contingencies which may arise, eliminating as not within the direct scope of the present discussion, all cases in which the insurer is not liable upon the contract.

CHANGE OF
BENEFICIARY.

IN MUTUAL
BENEFIT
INSURANCE.

Indiana Law.

IN REGULAR
LIFE
INSURANCE.

*The Change of
Beneficiary
Clause.*

*Regular Life
Policy.*

We come first to the questions involving the right to change the beneficiary. The power of making a change of beneficiary is almost always given to the member of a mutual benefit society by express provision in the charter, constitution, or by-laws (64), and in many of the States, this right is also given to the members of such societies by express statutory provision (65). In Section 112 of the Indiana Insurance Laws, we find a provision giving the same right to policyholders in a legal reserve company. Almost all of the regular life insurance companies now doing business in this country will write policies allowing the insured to make a change of beneficiary. Some companies insert the "Change of Beneficiary Clause" in all their policies; others make inquiry at the time the insurance is applied for, whether the insured desires to reserve the right to change the beneficiary, and still other companies do not give the insured such right, unless he makes an express demand to have this provision inserted in his contract. The "Change of Beneficiary Clause" in regular life insurance policies, provides in substance, that the insured may at any time, if the policy is not then assigned, change the beneficiary, by forwarding his policy to the home office of the company with a

written request for such change, and that the change will take effect upon the endorsement thereof upon the policy by the company, and without the consent of the then beneficiary. This clause does not differ materially in the contracts of the different companies, the only difference being that some companies require the request for the change to be "duly acknowledged," and in some policies, the consent of one of the officers is expressly required.

The method of changing a beneficiary of a mutual benefit certificate is set forth in the rules and by-laws of the association, supplemented by statutory provisions. The usual requirements of mutual benefit societies are, that the member desiring to make a change shall endorse upon his certificate a revocation of the old designation, and a request that the benefits thereafter be payable to the proposed beneficiary. This endorsement is generally required to be attested by the secretary of the lodge to which the insured belongs, and the certificate is then forwarded to the officers of the Supreme Lodge, who cancel the old certificate and issue a new one, payable as requested. For the issuance of a new certificate, a small fee is usually required. In some few benefit societies, the insured member has only the right to apportion the fund, and in such cases there can be no change of beneficiary (66); nor can such change be made, where it is prohibited, either by express provision in the certificate, or by provisions to the same effect in the charter, constitution or by-laws (67).

While there may appear to be but little difference between a regular life insurance policy and a

IN MUTUAL
BENEFIT
INSURANCE.

*Usual method
of changing the
beneficiary.*

*When no
change can be
made:—*

- 1. Where mem-
ber can only
apportion.*
- 2. Where
change is pro-
hibited.*

Membership in mutual benefit society gives member the right to change beneficiary.

No vested interest.

contract of mutual benefit insurance, a closer study will disclose that the rights of beneficiaries differ widely in these two classes of life insurance. Thus, it has been held with substantial unanimity, that membership in a mutual benefit society confers upon the member the right to change his designation of a beneficiary, and that the beneficiaries have no vested interest in the benefit fund (68). Just why there should be this difference from regular life insurance, in which the rights of the beneficiary are vested, is somewhat difficult to determine. Mutual benefit insurance is often referred to as "the poor man's insurance," for while the benefits are usually small, the dues and assessments paid barely cover the current cost of the protection. The purpose of these societies is to provide a fund payable to the family or dependents of the member, and considering the obvious hardships which might arise from a change in the domestic relations, such as the death of the wife, the emancipation of some of the children, or the re-marriage of the member, the courts became eager to construe the contract so as to give to the member the right, any time, and without the consent of the beneficiary, to make a new designation of those to whom the benefits should be payable.

**"CHANGE OF
BENEFICIARY
CLAUSE" OF
REGULAR LIFE
INSURANCE
CONTRACTS.**

Life insurance companies, also realizing the hardships of an insurance contract which gives to the beneficiary a right indefeasable by any act of the insured, have within the last decade, inserted in their policy contracts, either as a matter of course or at the request of the insured, the "Change of Beneficiary Clause," thus giving the insured the right to designate a new beneficiary without the

consent of any prior beneficiary (69). While, in its short period of existence, this clause has often been before the courts for adjudication, there are still many points of law as yet undecided, and it is only by a study of the decisions in the mutual benefit cases that we are able to judge what position the courts will take when these questions come before them. Some eminent insurance experts have contended that a policy containing the clause under discussion, is in effect, a policy payable to the estate of the insured, regardless of who the beneficiary may be, and hence, can be reached by the creditors of the insured, in spite of the "Wife's Policy Laws," (See Volume VII., Nos. 26 and 27, Transactions, Actuarial Society of America.) Such construction of the "Change of Beneficiary Clause" is clearly wrong.

*Effect of
Change of
Beneficiary
Clause in
"Wife's
Policy."*

Wife's Policy Laws were enacted for the protection of wives and children, and the courts of this country have so strong a desire to protect the weak and defenceless, that they will give these laws a strict and literal construction, a construction which must, and will, give to the beneficiaries the full statutory protection in all policies, those containing a "Change of Beneficiary Clause," as well as those which do not contain the provision. The rights of a beneficiary under a contract containing such a clause, amount to more than a mere expectancy; they are rights which are vested, and are subject only to be defeated by an exercise, by the insured, of his power to make a change.

The provisions of the charter, constitution, by-laws, or contract, prescribing a certain method by which the beneficiary may be changed, must be

*Compliance by
insured with
rules and re-
quirements to
change.*

Absence of requirements.

"By complying with the laws" of the association.

Change of By-laws.

Consent of insurer.

Refusal of Consent.

Waiver, by insurer, of strict compliance.

Where policy or certificate is lost or cannot be surrendered; or Where insured has done all in his power, but dies before insurer changes the beneficiary.

complied with, as far as possible (70), but in the absence of any prescribed method, the change may be made in any manner showing the intent to make the change (71). Many certificates contain a clause allowing a member to change the beneficiary by "complying with the laws" of the association, and in order to make an effective and valid change, the insured must comply with the laws existing at the time the change was made (72), for there is no doubt that an incorporated society has the inherent right to amend, repeal, alter or suspend its by-laws and thus alter the required method of changing the beneficiary. Where the rules require the consent of the insurer to a proposed change of beneficiary, such consent is usually given, as a matter of course, but a refusal of such consent, based upon reasonable grounds, will bar a recovery by the new beneficiary (73). A strict compliance with the rules of the organization may be waived by the insurer, and where a change has thus been made, the original beneficiary will not be heard to complain that the rules were not complied with (74).

It is not at all unusual for the insured to find himself in a position where he cannot comply with the rules or by-laws, and the insurer is unwilling to waive strict compliance. The certificate or policy may be lost, or in the possession of the beneficiary who refuses to part with it, or the insured may do all in his power to make the change, but may die before the change is actually made by the company or society. In cases of this kind a court of equity will give relief, and decree that to be done which should have been done, and act as if the change had, in fact, been completed (75), but in no case

will this protection be extended where the insured has wilfully or negligently omitted to take one of the required steps (76).

Although in many respects a change of beneficiary is analogous to a testamentary act, still it has been held immaterial, so far as the original beneficiary is concerned, that the change was brought about by persuasion, undue influence or even fraud (77) and a careful consideration will show that a case of this nature is not at all analogous to an attempt to contest a will upon the same grounds.

Fraud or undue influence.

This discussion leads to the query:—Can the beneficiary be changed by the last will and testament of the insured?

CHANGE OF
BENEFICIARY BY
WILL.

Where the rules or by-laws of the organization prescribe the method by which the change shall be made and do not include the right of disposition by will, the insured is bound by such regulations, and an attempt to change the beneficiary by will is inoperative (78); but where no method has been prescribed as to how the change of beneficiary may be made, or where no beneficiary has been previously designated, the appointment by the insured, in his will, of a person to whom the fund shall be payable, will be construed as a valid change or designation of beneficiary (79).

When insured cannot make change by will.

When insured can make change by will.

Ordinarily, the insured cannot defeat the interest of a beneficiary under a contract of life insurance where there is no change of beneficiary clause, but there is one exception to this general statement, known as the Wisconsin rule. In this State it has been held, that one who has procured a policy of life insurance on his own life, for the benefit of another, and has paid the premiums thereon, may

Wisconsin rule—when insured has absolute control over policy.

dispose of the insurance, by will or otherwise, to the exclusion of the beneficiary named in the policy, and the fact that the change was made in the lifetime of the beneficiary, does not affect this rule (80). The rule does not, however, apply to statutory wife's policies.

It has been contended that the right to change passes to the assignee, under an absolute assignment; that some distinction should be made between policies in which the change of beneficiary clause has been inserted at the request of the insured, and policies where the clause is inserted by the company as a matter of course in all policies; and that the interest of a beneficiary under a policy containing this clause differs widely from the interest of a beneficiary of a mutual benefit certificate. These questions have not, as yet, been squarely before the courts, but the opinion would seem strongly in favor of these contentions.

DEATH OF
BENEFICIARY
PRIOR TO THAT
OF INSURED.

*In Mutual
Benefit
Insurance.*

Another question for consideration is, what effect the death of a beneficiary prior to that of the insured, may have on the payment of the proceeds and the rights and interest of such a beneficiary.

It is almost universally held, that where the beneficiary of a mutual benefit certificate dies prior to the insured, the benefit fund does not, on the subsequent death of the member, go to the personal representatives of the beneficiary (81). This is due to the character of the organization and to hold otherwise would be not only contrary to the intent and purpose of the contract, but would also, in many cases, allow the proceeds to be paid to persons, who, under the laws of the society, could not have been made beneficiaries in the first instance.

In regular life insurance, where these reasons do not exist, it is firmly settled that upon the death of the beneficiary, his interest passes to his administrator or executor, unless there be a provision in the policy to the contrary (82). There are a few cases (83), which at first glance, may seem to be contrary to this general principle. The cases referred to are those in which the policy was payable to the wife of the insured, and the wife predeceased her husband. The courts here held that on the death of the wife, her interest passed to her husband, not by reason of any lack of a vested interest in her, but because the chose in action belonged, at the death of the wife, to her husband, and these decisions will be followed wherever this common law right of the husband has not been changed by statute. It was further held in 85 N. Y., 593, that the common law right of survivorship in the husband, was not affected by the statutes concerning insurance on the lives of husbands for the benefit of their wives.

*In Regular
Life Insurance.*

*Death of wife
beneficiary.*

Where a policy is payable to the wife, and in the event of her prior death, to the children of the insured, the children have merely an interest conditional upon the death of their mother prior to that of the insured. Upon the death of the mother prior to the death of the insured only such children as survive her are entitled to share in the proceeds, and any child which may have predeceased the mother, loses, by its death, all right, title and interest in the insurance fund, and no claim to the proceeds can be maintained by its personal representatives (61), (62), (84). If, on the other hand, the wife of the insured survived him, she would be

*Policy payable
to "wife and, in
the event of her
prior death, to
the children."*

Death of wife.

Death of child.

entitled to the entire proceeds for the condition precedent, upon which the rights of the children to receive the proceeds depended, had never occurred.

JOINT BENEFICIARIES.

Death of one.

*In Mutual
Benefit
Insurance.*

Suppose we have a life insurance contract in which there are two, or more, beneficiaries. What would be the effect of the death of one of them?

In the law of mutual benefit insurance, this query has been answered by saying that the rights of the beneficiaries are similar to a joint tenancy with the right of survivorship; in other words, that upon the death of one of the beneficiaries prior to that of the insured, his interest goes to the surviving beneficiary or beneficiaries (85). But in the case of a regular life policy, the situation is entirely different, for here the beneficiaries take a vested interest as tenants in common (86); and while there has as yet been no adjudication on this question where the policy contained a change of beneficiary clause, the same conclusion would be reached, for the interest of such beneficiaries must be treated as vested, subject only to be defeated by a chance.

*In Regular
Life Insurance.*

*Marriage of
insured.*

Marriage of the insured after the issuance of a mutual benefit certificate, will not of itself, defeat the rights which the then beneficiary may have (87), unless by statute, charter or by-laws, the wife, or wife and children, are entitled to the proceeds (88).

MURDER OF
INSURED BY THE
BENEFICIARY.

Murder of the insured by a beneficiary or assignee, will not ordinarily affect the liability of the insurer upon the contract; but on the ground of public policy, the funds will not be paid to the murderer or to any persons claiming under him (89). If the insurer be a mutual benefit society, the proceeds will be paid to the personal representatives of

the insured, for the benefit of those who would have been entitled thereto, if no designation of beneficiary had been made, excluding, of course, the murderer and those claiming under him. If the contract is one of regular life insurance, the personal representatives of the insured are entitled to recover the proceeds and hold the money received as a part of the insured's estate.

ASSIGNMENT.

Definition.

An assignment is a transfer, or making over, of the whole of any property, real or personal, in possession or in action, or of any estate or right therein.

*Consideration.
Assignment of
entire chose
in action.
Assignment of
a part.*

An assignment of the whole of any property, is the creation of an irrevocable power of attorney and no consideration is required.

The assignment of a part only, will be upheld in equity (90), but as it is the creation of an equitable charge, consideration is necessary.

**ASSIGNABILITY
OF A LIFE INSUR-
ANCE CONTRACT.**

At common law, a contract of life insurance could not be assigned so as to give the assignee any rights thereunder in a court of law; but equity recognized the assignment, and would compel the assignor to permit the use of his name in an action to recover for the benefit of an assignee. At the present time, the assignee may bring his action at law, in the name of the assignor; and in many States, the assignee may even sue in his own name, if the entire chose in action has been assigned. Where, however, the assignor refuses to allow his name to be used, or where but a part of the chose in action has been assigned, the assignee must go into equity.

*Regular life
insurance
policy.*

Regular life insurance policies are assignable choses in action (91).

*Mutual Benefit
Certificate.*

Mutual benefit certificates are also assignable, but, as a rule, no assignment of the certificate can be made prior to the death of the insured, to any

person not within the class of persons eligible to beneficiaryship (92).

Assignments are governed by the laws of the place where they are made (93), irrespective of the place where the contract of insurance was consummated.

What law governs.

While the assignment of life insurance contracts is generally governed by the rules applying to the assignment of all choses in action, there is present an additional element—insurable interest. It is the rule in most States (94), that if the transaction is bona fide, the assignment of the interest in a valid contract of insurance is valid, although made to one who has no insurable interest in the life of the insured, but there are other States (95) in which it is held that the assignee must always have an insurable interest, or the assignment will be invalid. The jurisdictions in which the assignee is required to have an insurable interest, have very likely been governed by the cases of Warnock vs. Davis and Cammack vs. Lewis, in the United States Supreme Court, which were instances of clearly wagering transactions, and the assignments were justly condemned. The conclusion in both of these cases would have been reached in the courts throughout the Union, on a similar statement of facts; but to follow the conclusions reached in these two cases, without regard to the particular facts in each case—cannot but lead to error. The mere fact that an assignee, without insurable interest, has a greater interest in the death than in the life of the insured, is of itself, no reason why the assignment should be condemned, for there are numerous instances in which the law has upheld other transactions in

Insurable Interest.

When unnecessary.

Contrary decisions.

which the interest of one person depended upon the death of the other.

Whether the assignment is a mere cover for a wager, may be determined by ascertaining whether the policy was taken out with the intention of assigning it as soon as it was issued; by whom the premiums had been paid before, and by whom they will be paid after the assignment; by whom (beneficiary or insured) the assignment was made; the relations of the parties; but until a wagering transaction is shown there is no reason why any court should condemn an assignment merely on the ground that the assignee had no insurable interest. Lack of insurable interest in the assignee will not, in the absence of express provision, avoid the contract.

Termination of assignee's insurable interest.

Termination of the assignee's insurable interest will not invalidate the assignment (96), but the wording of the assignment may prevent the assignee from holding as his own, any part of the proceeds, in the event of the termination of such interest.

Form of words used.

In making an assignment, no particular form of words need be used, so long as a clear intention to assign is shown (97).

Notice to insurer.

To complete the assignment of a life insurance contract the insurer should be informed thereof, for until notified of the assignment, the insurer is entitled to regard the assignor as the owner, and he may accept a release from him, thus barring the right of the assignee against the insurer. A notice to the insurer is also advisable, in view of the fact that by so doing, the assignee is entitled under the

New York Statute, to notice of due date of premiums.

Where the assignment is in writing, delivery of the policy is not absolutely necessary to validate the assignment (98), but the assignment must, in such cases, be delivered. Even a writing is not necessary, for the policy may be transferred by parol, if accompanied by delivery (99). Thus, the policy may be the subject of a gift, either *causa mortis* or *inter vivos* (100).

*Delivery of
policy or
assignment.
Transfer by
parol.
Gift.*

Where the policy requires the consent of the insurer to an assignment, the parties to the assignment cannot object because such consent was not obtained (101). While there is a conflict of decisions on the right of the insurer to object to an assignment on the ground that its consent, as required by the contract, had not been obtained, it is difficult to see how the assignment of the chose in action can be prevented by a clause injected into the policy by the insurer for his own protection. In the absence of a condition that assignment of the policy or certificate will render it void, the assignee will be entitled to the proceeds of the policy (102); in the event of the insurer's refusing to pay to the assignee, an action could be brought in the name of the assignor, and the insurer could not set up as a defence that the action was brought for the benefit of the assignee. An attempt by the insurer to prescribe how an assignment shall or shall not be made is futile, in so far as it seeks to prevent the assignee from being entitled to the proceeds.

*Consent of
insurer.*

Nearly all *change of beneficiary clauses* give the insured the right to make change of beneficiary

*"Provided the
policy is not
then assigned."*

"*provided that the policy is not then assigned*" or words to the same effect. The result of the insertion of this condition is that where the policy has been assigned, the insured cannot make any change of beneficiary. This condition, however, refers only to the time when the request for a change is made. In other words, if the policy has been assigned in the past, but there has been a release or reassignment to the original assignor before the request for a change of beneficiary is made, such request must be granted by the insurance company unless there is some other reason for a refusal. In such case, the release or reassignment has the effect of placing all the persons interested in exactly the same position in which they were before the assignment, and the policy may be dealt with as if no assignment had ever been made. The reassignment by the original assignee to the original assignor cannot be considered an assignment within the meaning of the change of beneficiary clause. The question now arises: what effect will an assignment by a *third party beneficiary* have upon the right of the insured to make a change of beneficiary where the policy contains the condition above mentioned? This condition is inserted in the *change of beneficiary clause* for the protection of the insurance company, and if the beneficiary has assigned his interest in the policy, the company can, by virtue of this condition, refuse any request for a change of beneficiary during the existence of the assignment. The condition may, however, be waived by the company and the insured may then make a valid change and thus cut off all the rights which

the assignee of the beneficiary took under the assignment. The beneficiary's rights and interest were subject to the right of the insured to make, at any time and without the consent of the beneficiary, a change of beneficiary, and the assignee of the beneficiary has no greater rights and interest in the policy than his assignor had. Where the *change of beneficiary clause* makes no reference to assignments, or where the insurance company has waived its right to object, which it had under a clause similar to the one under discussion, the rights of an assignee of the insured cannot be defeated by an attempt on the part of the insured and the company to make a change of beneficiary. No valid change will be effected even though the insured and the company have done all in their power to make a change of beneficiary, for the assignee's rights under the assignment are vested and cannot be defeated by any acts on the part of the insured and the insurance company.

In order to make an absolute assignment, all persons having an interest in the policy must join in the assignment; an assignment will convey only such rights and interest as the assignor may have.

The insured may assign a policy payable to his estate, or he may assign his interest in an endowment policy (103). The beneficiary may also, ordinarily, assign his interest in the policy or certificate (104), subject of course, to the capacity of the beneficiary to make an assignment.

In the absence of statutory prohibition or limitation, if a statute gives to a married woman control over her property so that she may transfer the same, she is authorized, under such power, to trans-

Absolute assignment—who must join in.

When insured may assign.

Beneficiary may assign.

Wife's policy.

Assignment by married woman.

fer a policy in which she is the beneficiary (105). In some States, however, the right of a wife to assign a policy payable to her, is limited in so far that her husband must consent to the assignment; and in cases involving the assignment of policies by married women, careful attention should be paid to the decisions and statutory provisions applicable thereto (106).

Amount of proceeds received by assignee.

Where assignment is a wagering transaction.

Absolute assignment to a creditor.

Where creditor may hold entire proceeds.

Contrary rule.

Ordinarily the absolute assignee of a policy or certificate of insurance, is entitled to the entire proceeds, if the entire chose in action has been assigned to him. Where, however, the assignment is made to a creditor, there is a conflict of decisions. Where the assignment is a wagering transaction, it is of course void, and the assignee can hold as his own merely the sums advanced by him, and must account to the assignor or his personal representatives for the balance (107). The conflict referred to is in cases where the assignment was a valid one. In New York, and many of the States, it has been held that if an absolute assignment of a policy is made to a creditor, the creditor can retain as his own the entire proceeds, even though the debt, with interest, and any premiums which have been paid, amount to a sum smaller than the proceeds of the policy (108). On the other hand, there are jurisdictions which hold that a creditor assignee can hold as his own only so much of the proceeds as is necessary to his indemnity, and that the balance is payable to the assignor or his personal representative (109).

There is no justification, on sound legal principles, for thus turning an absolute assignment into an assignment as collateral security. The assignee

creditor is not receiving absolute payment of the debt, with interest, and any premiums which he may have to pay to keep the policy alive, when he takes an assignment of the policy from his debtor. A policy of insurance is not a guarantee that its face value will be paid at its maturity. The insured may be executed as a criminal, the assignor, if he is a beneficiary or prior assignee, may murder the insured, the insured may refuse to pay the premium and the assignee may be unable to do so, and the policy may lapse; these, and many other conditions may arise, which if they do not entirely divest the assignee of all right to the proceeds, may reduce the proceeds to a sum less than the amount of the debt.

A creditor taking an assignment of a policy of insurance from his debtor is, in effect, engaging in a legitimate speculation, and as he takes with the assignment its burdens, he should also be entitled to the entire benefits thereunder. If it is the desire of the assignor to limit the right of the assignee to the amount of the debt, let him so word the assignment that it will have that effect. An assignment to the creditor "as his interest may appear," would limit the right of the assignee to such a part of the proceeds as might be necessary to his indemnity.

It has been held that an assignment, absolute in form, may be shown by extrinsic evidence to have been, in fact, as collateral security (110), and under a collateral assignment, the assignee may hold as his own, only the amount of the debt, plus interest and expenses (111). But where a court gives to an assignment, absolute in fact as well as in form, the same effect that it would give to an

*Assignment
as collateral—
amount
received
by assignee.*

assignment as collateral, it is difficult to see either justice, or a recognition of sound legal principles in such decision.

*Fraud or
Undue
Influence.*

*Assignment in
fraud of
creditors.*

*Murder of
insured by
assignee, or a
predecessor in
interest.*

An assignment of the beneficial interest in a life insurance contract may be avoided, if it has been procured through the use of fraud or undue influence (112), or if it has been made in fraud of creditors (113). Murder of the insured by the assignee, or by one through whom he takes his interest, does not avoid the assignment, but on the grounds of public policy, the murderer or those claiming under him will not be entitled to any part of the proceeds, which will go to the insured's personal representatives (89); or, in the case of mutual benefit insurance, to the insured's personal representatives for the benefit of those (exclusive of the murderer and those claiming under him), who would have received the proceeds had no beneficiary been designated.

Bearing in mind that there are in force at the present time in the United States more than fifteen billions of dollars of life insurance, and that the army of prudent individuals who have availed themselves of the benefits of life insurance is increasing rapidly, we cannot fail to realize the enormous interests involved.

In a large number of the life insurance contracts now in force, there will be no question as to whom the proceeds shall be paid at the maturity of the policy or certificate, but there are also a large number of life insurance contracts which will involve, at or before their maturity, the questions:—

First:—To whom shall the proceeds be paid?
and

Second:—If the proceeds are payable to more than one person, how shall they be apportioned?—and, though no general rule of construction or interpretation can be laid down, an effort has been made to show what position the courts have taken in the past regarding these questions, and what position they will be likely to take in the future.

FORMS OF ASSIGNMENT.

ABSOLUTE ASSIGNMENT.

For Value Received.....hereby assign and transfer untoof
.....
the Policy of Insurance known as No.....,
issued by the

..... **LIFE INSURANCE COMPANY,**
upon the life of....., of
....., and all dividend, benefit, and
advantage to be had or derived therefrom, subject to the
conditions of the said Policy.

Witness.....hand and seal, this.....day
of.....nineteen hundred.....

.....
.....

State of..... }
County of..... } ss.

On this.....day of....., 190 , before
me personally came
to me known to be the individual described in and who
executed the foregoing assignment, and acknowledged
that.....executed the same.

.....
.....

ABSOLUTE ASSIGNMENT.

For Value Received, I hereby assign, transfer, and set over all my right, title and interest in Policy No..... issued on the life of.....by (Full Name)

————— LIFE INSURANCE COMPANY,

to of and I do also for myself, my executors and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above named assignee, his executors, administrators, and assigns, and their title to the said Policy will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal, at..... thisday of.....I

.....[SEAL]
(Full Name)

.....[SEAL]
(Full Name)

In presence of

.....
.....

ABSOLUTE ASSIGNMENT WITH POWER OF ATTORNEY.

For Value Received,.....hereby transfer, assign, and set over unto.....and.....executors, administrators or assigns, all.....right, title, and interest in Policy of Insurance issued by _____ Company, No.dated....., and all advantages to be derived therefrom.

Furthermore,.....hereby constitute the above-named assignee or.....lawful substitute,lawful attorney for.....and in.....name to collect from the above-named Company any and all moneys which, under said policy, shall become owing thereon, whether for dividends, capital sum insured, or otherwise, and to acquit said Company therefor as fully as.....could in person do or accomplish any or all of the acts aforesaid.

Witness.....hand and seal , this.....day of 19.....

.....[L.S.]

.....[L.S.]

Sealed and delivered in the presence of

.....
.....

ASSIGNMENT OF LIFE INTEREST IN ENDOWMENT POLICY.

For Value Received, I hereby assign the benefits payable at my death, in the event of its happening prior to the expiration of the endowment period, under Policy No., issued by the _____ Insurance Company of, with all the proceeds thereof and all sums of money, interest, benefit and advantages whatsoever accrued and to accrue thereunder unto....., residing at....., and I do also for myself, my executors, administrators or assigns, guarantee the validity and sufficiency of this assignment to the above-named assignee,executors, administrators or assigns, and..... title to the contingent interest in said Policy above set forth will forever warrant and defend.

State of..... }
County of..... } ss.:

On this.....day of....., 19 ,
before me personally came.....
to me known to be the individual described in and who
executed the foregoing assignment and acknowledged
that.....executed the same.

.....

.....[SEAL]

.....

ASSIGNMENT, CONDITIONAL UPON DEATH PRIOR TO MATURITY
OF POLICY AND THE SURVIVAL OF THE ASSIGNEE.

For Value Received, I hereby transfer, assign, and set over unto..... and assigns, all my right, title and interest in Policy of Insurance issued by _____ Company, No. dated.....I...., and all advantages to be derived therefrom: **Provided**, the said Policy shall become payable by reason of my death prior to the date when the endowment would have matured: and **Provided also** that the said assignee shall then survive me, otherwise all right, title and interest in the said Policy is to revert to me, as fully as if this Assignment had never been made.

Witness my hand and seal, this.....day
of19.....

Sealed and
delivered in the }[L. s.]
presence of }

ASSIGNMENT IN CONSIDERATION OF LOVE AND AFFECTION
CONDITIONAL UPON SURVIVAL OF ASSIGNEE.

In Consideration of natural love and affection, and of other valuable considerations, I, insured in and by a policy or contract of insurance, numbered.....and issued.....by

_____ LIFE INSURANCE COMPANY,

do hereby assign and transfer unto..... my..... and for.....sole use and benefit, all my right, title and interest in and to said policy, or contract of insurance, meaning thereby to convey all

the rights and benefits that would accrue if said assignee was actually named in said policy or contract of insurance as the beneficiary.

I hereby guarantee the validity and sufficiency of this assignment to the above named assignee, subject to the terms and conditions of said policy, or contract of insurance, and authorize the said Company to pay any remaining balance of proceeds thereof, at its termination, to the said assignee, without the payment to me of any further consideration.

Provided, however, and this assignment is made upon the express condition, that if the said insured shall survive the said assignee or shall be living at the expiration of the endowment period (if such period is named in the said policy or contract), then this assignment shall thereupon cease and determine, and all interest therein shall revert to and vest in the said assignor,.....executors, administrators or assigns.

Witness.....hand and seal this.....day
ofA. D. 190...
.....[L. s.]
.....[L. s.]

State of.....} ss.
County of.....}

Be It Known that on the.....day
ofA. D. 19.., before
me, a Notary Public in and for the said County, in
the State aforesaid, duly commissioned and sworn,
personally came and appeared.....
of legal age, to me personally known, and known to
me to be the same person described in, and who executed the foregoing instrument, and to me acknowledged the same to be.....free act and deed.

In Testimony Whereof, I have hereunto subscribed my name, and affixed my seal of office, the day and year last above written.

.....

ASSIGNMENT—COLLATERAL.

For Value Received,.....hereby assign to.....
....., of.....allright,
title, and interest in Policy No., issued by
the ——— LIFE INSURANCE COMPANY, together with all
.....right, title, and interest in all distributions made
and declared, or to be made and declared, to or under said
Policy (except that such distributions may be used in pay-
ment of premiums by the insured), to be held as collateral
security for the amount ofdemands, sub-
sisting against
.....at de-
cease, with the right to collect the same at the maturity of
the Policy, and also to surrender the same at any anni-
versary of issue at.....option to the said Insur-
ance Company, and receive the cash surrender value there-
of, and to pay the balance, if any, after payment of said
indebtedness, to the persons entitled thereto, under the
terms of the Policy.

The payment of said Policy, or the cash surrender
value thereof, to said.....,
and.....receipt for the same, shall be a full dis-
charge and release to said Insurance Company of all
.....claims under said Policy; and said Insurance
Company shall not be bound in any way to see to the ap-
plication of the proceeds of said Policy.

Witness.....hand and seal at.....
thisday of.....190 .

.....[L. S.]

In presence of

.....

ASSIGNMENT AS COLLATERAL SECURITY.

For Value Received.....hereby assign and transfer unto, of, as collateral for a loan of..... dollars (\$.....) with.....interest, all.....right, title and interest in and to Policy numbered..... issued by the

————— **LIFE INSURANCE COMPANY,**

upon the life of....., of, subject to all the conditions of said policy, it being understood, however, that all distributions of surplus apportioned to this policy may be paid to or used for the benefit of the insured.

The insured waives, during the life of this assignment, the right (if any there be), reserved in said policy to make change of beneficiary.

And said Company is authorized, on maturity of said policy, to deduct from the proceeds thereof, the amount of the indebtedness hereby secured and to pay the same to the Assignee ; the balance of said policy, if any remain, to be payable as designated therein.

In case of default in the payment of the indebtedness hereby secured, the Company may, upon the demand, and the sole signature of the Assignee to the surrender receipt, pay and satisfy the claim of the Assignee from out of the cash surrender value of said policy, according to the Company's general rules then in use; the balance of said value, if any remain, to be paid to....., which payment shall be in full satisfaction of said policy.

In Witness Whereof,have hereunto set..... hand and seal, this.....day of19....

.....[L. S.]
.....[L. S.]
.....[L. S.]

In presence of

.....

ASSIGNMENT—COLLATERAL, WITH POWER OF ATTORNEY.

For Value Received,.....hereby transfer, assign, and set over unto..... and.....executors, administrators or assigns, allright, title, and interest in Policy of Insurance issued by _____, No., dated.....I....., and all advantages to be derived therefrom, as a collateral security for indebtedness.

Furthermore,.....hereby constitute the above-named assignee or.....lawful substitute..... lawful attorney for.....and in.....name to collect from the above-named Company any and all moneys which, under said policy, shall become owing thereon, whether for dividends, capital sum insured, or otherwise, and to acquit said Company therefor as fully as.....could in person do or accomplish any or all of the acts aforesaid.

Witness.....hand and seal, this.....day of19.....

.....[L. S.]

.....[L. S.]

Sealed and delivered in presence of

.....
.....

DISCHARGE OF ASSIGNMENT.

In consideration of full payment, receipt of which is hereby acknowledged, and of other valuable considerations, I hereby release all.....right, title and interest in and to the policy or contract of insurance known asissued by

———— LIFE INSURANCE COMPANY,

and the assignment executed.....is hereby fully discharged.

Witness my hand and seal this.....day ofA. D. 190 .

.....[SEAL]

State of.....} ss.
County of.....}

Be It Known that on the.....day of.....A. D., 190 , before me, a Notary Public in and for the said County in the State aforesaid, duly commissioned and sworn, personally came and appeared..... of lawful age, to me personally known, and known to me to be the person described in, and who executed the foregoing instrument, and to me acknowledged the same to be.....free act and deed.

In Testimony Whereof, I have hereunto subscribed my name, and affixed my seal of office, the day and year last above written.

.....

RELEASE OF AN ASSIGNMENT.

Whereas, By a certain assignment, dated.....day
of....., Policy No....., issued
by..... on the life of.....
was transferred to.....
the undersigned, as a collateral security for indebtedness.

This is to Certify, That the said indebtedness has been
paid in full, and the said Policy and all claims thereunder
are hereby restored to the assignor or assignors as of their
former rights and interests as they existed at the making
of such assignment, and such rights and interests are here-
by acknowledged to have reverted to them as if the above-
mentioned assignment had not been made.

Witness.....hand and seal, this.....day
of..... one thousand nine hundred and.....
[L. S.]
[L. S.]

Sealed and delivered in presence of
.....
.....

RE-ASSIGNMENT OF POLICY.

For valuable consideration, the receipt whereof is here-
by acknowledged,..... hereby re-assign and re-trans-
fer unto of.....
all.....right, title and interest in and to Policy
No. issued by the..... Insurance Com-
pany, to hold the same unto the said.....
.....absolutely freed and discharged from
the assignment heretofore made to.....

Witness.....hand and seal at.....,
this.....day of.....A. D., 19 ..
[SEAL]
[SEAL]

Signed, sealed and delivered in presence of
.....
.....

TABLE OF CASES CITED.

1

Beneficiary may sue on contract.

- Cal. Kumle vs. Grand Lodge, 42 Pac., 634.
 Mass. Nims vs. Ford, 35 N. E., 100
 " Wright vs. Vermont Life, 41 N. E., 303.
 Md. Smith vs. B. & O. Ry. Co., 32 Atl., 181.
 R. I. Munroe vs. Providence Assn., 34 Atl., 149.
 Tex. Pac. Mut. L. Ins. Co. vs. Williams, 79 Tex.,
 633; 15 S. W., 478.

2

Mere relationship does not give insurable interest.

- Eng. Reed vs. Royal Ex. Ass. Co., Peake Add. C., 70.
 " Lucena vs. Crawford, 2 Bos. & P. N. R., 270,
 324.
 " Halford vs. Kymer, 10 Barn. & C., 724.
 " Hebdon vs. West, 3 Best. & S., 579.
 " Shilling vs. Acc. Death Co., 27 L. J. Ex., 16.
 " Ex parte Houghton, 17 Ves., 252.
 Ind. Elkhardt vs. Houghton, 103 Ind., 286.
 Mass. Forbes vs. Amer. Mut., 15 Gray, 249.
 " Lord vs. Dall, 12 Mass., 115.
 Mo. Chisholm vs. Nat. Life, 52 Mo., 213.
 N. C. Trinity College vs. Travelers, 113 N. C., 244;
 18 S. E., 175.
 N. Y. Gratton vs. Nat. Ins. Co., 15 Hun, 74.
 Pa. Keystone Mut. vs. Norris, 115 Pa. St., 466.
 " Reserve Mut. vs. Kane, 81 Pa. St., 154.
 " Appeal of Corson, 113 Pa. St., 438.
 " United Ben. Soc. vs. McDonald, 122 Pa. St.,
 324.
 U. S. Warnock vs. Davis, 104 U. S., 779.

3

Insurable interest unnecessary at Common Law.

- Eng Dalby vs. India Ass. Co., 15 Com. B., 365, 386.
 " Crawford vs. Hunter, 8 Term. Rep., 23.
 " Cousins vs. Nantes, 3 Taunt., 522.
 " Dean vs. Dicker, 2 Str., 1250.
 Irish..... Schweiger vs. Magee, Cook & Alc., 182.
 " Shannon vs. Nugent, Hayes, 536.
 Md. Rittler vs. Smith, 70 Md., 261.
 Mo. Chisholm vs. Nat. Ins. Co., 52 Mo., 213.
 N. J. De Ronga vs. Elliott, 23 N. J. Eq., 486, 492.
 " Trenton Mut. vs. Johnson, 4 Zab., 576.
 " Vivas vs. Sup. Lodge, 52 N. J. L., 469.
 N. Y. Abbott vs. Sebor, 3 Johns. Cas., 39.
 " Buchanan vs. Ocean Ins. Co., 6 Cow., 331.

4

Beneficiary must have insurable interest, if policy not taken out by the insured.

- Ill. Guardian Ins. Co. vs. Hogan, 80 Ill., 36.
 Ind. Amick vs. Butler, 111 Ind., 578; 12 N. E., 518.
 " Prudential vs. Jenkins, 43 N. E., 1056.
 " Prudential vs. Hunn, 52 N. E., 772.
 Ky. Settle vs. Hill, 5 Ky. L. R., 691.
 La. Rombach vs. Piedmont Co., 35 La. An., 233.
 Me. Mitchel vs. Union Life, 45 Me., 104.
 Mich. Met. Life vs. O'Brien, 92 Mich., 584; 52 N. W.,
 1012.
 Mo. Singleton vs. St. Louis Mut., 66 Mo., 63.
 " Whitmore vs. Sup. Lodge, 100 Mo., 36; 13 S.
 W., 495.
 N. C. Burbage vs. Windley, 108 N. C., 357; 12 S. E.,
 175.
 " Powel vs. Mut. Ben., 31 S. E., 381.
 N. Y. Ruse vs. Mut. Ben., 23 N. Y., 516.
 Pa. Stoner vs. Line, 16 W. N. C., 187.
 Fed. Brockway vs. Mut. Ben., 9 Fed., 249.
 Eng. Worthington vs. Curtis, 1 Ch. Div., 419.
 " Howard vs. Refuge F. Soc., 54 L. T., 644.
 See also:—Art. 1, Sec. 55, N. Y. Ins. Law.

Where insured takes out the insurance, Beneficiary need have no insurable interest.

- Col. Goodrich vs. Treat, 3 Col., 408.
 Conn. Lemon vs. Phoenix Mut., 38 Conn., 294.
 " Allen vs. Hartford Life, 45 At., 955.
 D. C. U. S. Mut. vs. Hodgkin, 4 App. D. C., 516.
 Fed. Fidelity Mut. vs. Jeffords, 107 Fed., 402 (Ga.)
 " Robinson vs. U. S. Assn., 68 Fed. 825 (Mo.)
 " Langdon vs. Union Mut., 14 Fed., 272.
 Ga. Equitable vs. Paterson, 41 Ga., 338.
 " A. O. U. W. vs. Brown, 37 S. E., 890.
 " Union League vs. Walton, 34 S. E., 317.
 Ill. Bloomington Mut vs. Blue, 120 Ill., 121; 11 N. E., 331.
 " Johnson vs. Van Epps, 110 Ill., 551.
 Ind. Milner vs. Bowman (dicta), 21 N. E., 1097.
 " Prov. Life vs. Baum, 29 Ind., 236.
 " Prudential vs. Hunn, 52 N. E., 772.
 Mass. Campbell vs. N. E. Mut., 98 Mass., 381.
 " Mut. Life vs. Allen, 138 Mass., 24.
 Mich. Heinlein vs. Imperial Life, 101 Mich., 250; 59 N. W., 615.
 Miss. Murphy vs. Redd, 64 Miss., 614.
 Mo. Masonic Assn. vs. Bunch, 109 Mo., 560; 19 S. W., 25.
 " Reynolds vs. Prudential, 88 Mo. App., 679.
 " Van Cleave vs. Union Casualty Co., 82 Mo. App., 668.
 N. C. Albert vs. Mut. Life, 122 N. C., 92; 30 S. E., 327.
 N. J. Vivar vs. Sup. Lodge, 52 N. J. L., 455; 20 At., 36.
 N. Y. Olmsted vs. Keyes, 85 N. Y., 593.
 " Massey vs. Rochester Soc., 102 N. Y., 523.
 " Sabin vs. Phinney, 134 N. Y., 423.
 " Freeman vs. Nat. Ben. Soc., 42 Hun, 252.
 " Corbett vs. Metropolitan, 55 N. Y. Supp., 775.
 Ohio. Eckel vs. Renner, 41 Ohio St., 232.
 Pa. Cunningham vs. Smith, 70 Pa. St., 450.
 " Scott vs. Dickson, 108 Pa. St., 6.
 " Overbeck vs. Overbeck, 155 Pa. St., 5; 25 At., 646.

- Pa. Hall vs. U. S. Life Assn., 154 Pa. St., 29.
 " Ducksbury vs. Sup. Lodge, 4 Lack. Leg. News,
 172.
 S. C. Crosswell vs. Conn. Assn., 51 S. C., 103; 28 S.
 E., 200.
 Vt. Fairchild vs. Northeastern, 51 Vt., 613.
 See also dicta in:—
 Conn. Mut. vs. Schaeffer, 94 U. S., 457.
 Aetna Life vs. France, 94 U. S., 561.

6

Beneficiary must have insurable interest in all cases.

- Ind. Indiana Ins. Law, Sec. 226.
 Ill. Illinois Ins. Law (Assessment Plan).
 Ky. Coudell vs. Woodward, 29 S. W., 614; 16 Ky.
 L. R., 742.
 " Basye vs. Adams, 81 Ky., 368.
 N. C. Trinity College vs. Ins. Co., 113 N. C., 244.
 Mich. Michigan Ins. Law, Par. 7512 (61).
 Mo. Missouri Ins. Law, Sec. 7926.
 Pa. Pennsylvania Ins. Law, Sec. 2, Act. 1883 (P.
 L., 80).

7

Termination of insurable interest does not avoid the contract.

- Eng. Dalby vs. India Ass. Co., 15 C. B., 1850.
 Iowa. Carter vs. Humboldt Ins. Co., 12 Ia., 287.
 Mass. Mut. Life vs. Allen, 138 Mass., 24.
 " Wilson vs. Hill, 3 Met., 66.
 N. Y. Rawles vs. Amer. M. L. I. C., 27 N. Y., 282.
 Ohio. Sup. Commandery vs. Everding, 20 Ohio Cir.
 Ct., 689.
 Pa. Appeal of Corson, 113 Pa. St., 445; 6 At., 213.
 " Lazarus vs. Ins. Co., 19 Pick., 81.
 " Corson vs. Garnier, 15 Weekly Notes, 451.
 R. I. Mowry vs. Home Life, 9 R. I., 346.
 U. S. Carpenter vs. Ins. Co., 16 Pet., 495.
 " Connecticut Mut. vs. Schaefer, 94 U. S., 457.
 " Ins. Co. vs. Bailey, 13 Wall. (U. S.), 616.
 " Sides vs. Knickerbocker Life, 16 Fed., 650.

In Mutual Benefit Insurance the Beneficiary must be within prescribed class; if he is not, the proceeds go to those who would take had no Beneficiary been named.

- Fed. Worley vs. N. W. Mas. Assn., 10 Fed., 227.
 " Gentry vs. Sup. Lodge, 23 Fed., 718.
 Ill. N. O. P. H. Soc. vs. Wilson, 52 N. E., 41.
 " Palmer vs. Welch, 132 Ill., 141; 23 N. E., 412.
 " Alexander vs. Parker, 144 Ill., 355; 33 N. E., 183.
 " Grimme vs. Grimme, 64 N. E., 1088.
 " Highland vs. Highland, 109 Ill., 336.
 " Swift vs. Ry. Conductors' Assn., 96 Ill., 309.
 Ind. Presbyterian Fund vs. Allen, 106 Ind., 593.
 Iowa. McClure vs. Johnson, 56 Ia., 620.
 " Mitchell vs. Grand Lodge, 70 Ia., 360; 30 N. W., 865.
 Ky. Duvall vs. Goodson, 79 Ky., 224.
 " Basye vs. Adams, 81 Ky., 368.
 " Gibson vs. Ky. Grangers, 8 Ky. L. R., 520.
 " Ky. Grangers vs. McGregor, 7 Ky. L. R., 550.
 " Van Bibber, Admr., vs. Van Bibber, 82 Ky., 347.
 " Beard vs. Sharpe, 38 S. W., 1057.
 " Leaf vs. Leaf, 92 Ky., 166; 17 S. W., 354.
 Mass. Clark vs. Schwartzberg, 162 Mass., 289; 35 N. E., 855; 41 N. E., 655.
 " Amer. L. of H. vs. Perry, 140 Mass., 580.
 " Daniels vs. Pratt, 143 Mass., 216; 10 N. E., 166.
 " Ridge vs. N. E. Mutual, 146 Mass., 286; 16 N. E., 628.
 " Burns vs. Grand Lodge, 153 Mass., 173; 26 N. E., 443.
 " Sargent vs. Sup. Lodge, 158 Mass., 557; 33 N. E., 650.
 " Shea vs. Mass. Ben. Assn., 176 Mass., 289; 35 N. E., 855.
 " Skillings vs. Mass. Ben. Assn., 146 Mass., 217; 15 N. E., 566.
 " Rice vs. N. E. M. A. Soc., 146 Mass., 248; 15 N. E., 624.
 " Smith vs. B. & M. R. R. Assn., 46 N. E., 626.
 Mich. Sup. Lodge vs. Nairn, 60 Mich., 44; 26 N. W., 826.

- Mich . . . Mich. Mut. vs. Rolfe, 76 Mich., 146.
 "Lyon vs. Rolfe, 42 N. W., 1094.
 Mich.Wolf vs. Grand Lodge, 102 Mich., 23; 60 N.
 W., 445.
 Minn.Walter vs. Oddfellows, 42 Minn., 204; 44 N.
 W., 57.
 Miss.Carson vs. Vicksburg Bank, 22 So., 1.
 Mo.Keener vs. Grand Lodge, 38 Mo. App., 543.
 "Expressmen's vs. Lewis, 9 Mo. App., 412.
 Neb.Fisher vs. Donovan, 57 Neb., 361; 77 N. W.,
 778.
 N. J.Amer. L. of H. vs. Smith, 45 N. J. Eq., 466.
 "Britton vs. Sup. Council, 46 N. J. Eq., 102; 18
 At., 675.
 "Grand Lodge vs. Connolly, 43 At., 286.
 N. Y.Armstrong vs. Warren, 64 N. Y. St., 291.
 "Simon vs. O'Brien, 87 Hun, 160.
 "Boasberg vs. Cronan, 9 N. Y. Supp., 664.
 "Bishop vs. Grand Lodge, 112 N. Y., 627; 20 N.
 E., 562.
 "Massey vs. Mut. Relief Soc., 102 N. Y., 523; 7
 N. E., 619.
 Ohio.Nat. Mut. Ben. vs. Gonser, 43 Ohio St., 1.
 "State vs. People's M. B. Assn., 42 Ohio St., 579.
 "State vs. Moore, 38 Ohio St., 7.
 "State vs. Standard Life, 38 Ohio St., 281.
 "McGuiness vs. Sup. Council, 53 N. E., 54.
 Pa.Arthars vs. Baird, 8 Pa. Co., 67.
 Texas.Schonfield vs. Turner, 75 Tex., 324.
 Wis.Ballou vs. Gile, 50 Wis., 614.
 "Dietrich vs. Madison Assn., 45 Wis., 79.
 "Groth vs. Central Verein, 70 N. W., 80.
 See also statutes of
 Connecticut, Idaho, Illinois, Indiana, Iowa,
 Maine, Maryland, Massachusetts, Michi-
 gan, Nebraska, New York, Pennsylvania,
 South Dakota, Texas, Virginia, Washing-
 ton and Wisconsin.

9

Charter and By-Laws of Mutual Benefit Society will be liberally construed.

Ind.Sup. Lodge, K. of P., vs. Schmidt, 98 Ind., 374.

- Mass. Amer. L. of H. vs. Perry, 140 Mass., 580.
 " Elsey vs. Oddfellows, 142 Mass., 224.
 Pa ... Maneely vs. Knights of B., 115 Pa. St., 305; 9
 Atl., 41.
 Wis. Ballou vs. Gile, 50 Wis., 614.

10

An enlarging Statute need not be formally adopted by the Society.

- Mass. Marsh vs. Supreme Council, 149 Mass., 512; 21
 N. E., 1070.

11

Restricting Statutes do not affect Certificates in force at the time of passage.

- Iowa. Lindsey vs. Western M. A. Soc., 84 Ia., 734; 50
 N. W., 29.
 N. Y. Spencer vs. Grand Lodge, 48 N. Y. Supp., 590.

12

Designation of Beneficiary in Mutual Benefit Insurance is an act of a testamentary nature.

- Col. Chartrand vs. Brace, 16 Col., 19; 26 Pac., 152.
 Conn. Continental Life vs. Palmer, 42 Conn., 64.
 D. C. Wash. Assn. vs. Wood, 4 Mackey, 19.
 Ky. Duyall vs. Goodson, 79 Ky., 228.
 Mich. Union Mut. vs. Montgomery, 70 Mich., 587; 38
 N. W., 588.
 Mo. Nat. Amer. Assn. vs. Kirgin, 28 Mo. App., 80.
 " Masonic Assn. vs. Bunch, 109 Mo., 560; 19 S.
 W., 25.
 N. Y. Aiken vs. Mass. Ben. Assn., 13 N. Y. Supp., 579.
 Tex. Thomas vs. Leake, 67 Tex., 469; 3 S. W., 703.

13

Where there is no valid designation of Beneficiary, the Society is liable to no one.

- Cal. Order of M. C. vs. Griest, 76 Cal., 494.
 Neb. Warner vs. Modern Woodmen, 93 N. W., 397.

- N. H. Eastman vs. Prov. Mut. Rel. Assn., 62 N. H.,
555.
N. Y. Hellenberg vs. I. O. B. B., 94 N. Y., 580.
Fed. Morely vs. Northwestern Assn., 10 Fed., 237.
But see :—
Mass. Hadley vs. Oddfellows, 54 N. E., 345.
Mich. Wolf vs. Dist. Lodge, 102 Mich., 23; 60 N. W.,
445.
N. J. Martin vs. Golden Star Frat., 18 N. J. L. J., 48.
N. Y. Bishop vs. Grand Lodge, 112 N. Y., 627.

14

Creditor has Insurable Interest in the life of his Debtor.

- Cal. Curtis vs. Aetna Life, 90 Cal., 245; 27 Pac., 211.
Conn. Fitzgerald vs. Hartford Life, 56 Conn., 116; 13
Atl., 673.
“ Bevin vs. Conn. Ins. Co., 23 Conn., 244.
Ill. Guardian Mut. Life vs. Hogan, 80 Ill., 35.
Ind. Nye vs. A. O. U. W., 36 N. E., 429.
“ Amick vs. Butler, 111 Ind., 578; 12 N. E., 518.
“ Walker vs. Larkins, 127 Ind., 100; 26 N. E.,
684.
Iowa Belknap vs. Johnson, 86 N. W., 267.
La. Succession of Hearing, 26 La. Ann., 326.
Md. Rittler vs. Smith, 70 Md., 261; 16 Atl., 890.
Mass. Morrell vs. Trenton Ins. Co., 10 Cush., 282.
Minn. Hale vs. Life Indemnity Co., 68 N. W., 182.
Mo. Parks vs. Conn. Ins. Co., 26 Mo. App., 511.
N. J. Trenton Mut. vs. Johnson, 24 N. J. L., 576.
N. Y. Rawls vs. Amer. Mut. Life, 27 N. Y., 282.
Pa. Amer. Co. vs. Robertshaw, 26 Pa. St., 189.
“ Cunningham vs. Smith's Exr., 70 Pa. St., 45.
“ Shaffer vs. Spangler, 22 Atl., 865.
“ Ulrich vs. Reinoehl, 22 Atl., 862; 143 Pa. St.,
238.
R. I. Mowry vs. Home Ins. Co., 9 R. I., 346.
S. C. Rivers vs. Gregg, 5 Rich. Eq., 274.
Tex. Equitable vs. Hazelwood, 75 Tex. 338; 12 S.
W., 621.

15

Wager policy is void. Beneficiary (if a Creditor) may hold as his own only so much of the proceeds as will pay the debt.

- Ga. Exchange Bank vs. Loh, 104 Ga., 446.
- Md. Rittler vs. Smith, 70 Md., 261.
- Pa. Ulrich vs. Reinoehl, 143 Pa. St., 238.
- “ Grant vs. Kline, 115 Pa. St., 618.
- “ Cooper vs. Schaefer, 11 Atl., 548.
- U. S. Cammack vs. Lewis, 15 Wall., 643.
- “ Warnock vs. Davis, 94 U. S., 775.

16

Creditor Beneficiary may hold as his own only so much of the proceeds as will pay the debt with expenses and interest.

- Ga. Exchange Bank vs. Loh, 31 S. E., 459; 104 Ga., 446.
- S. C. Rivers vs. Gregg, 5 Rich. Eq., 274.
- Tex. Cheeves vs. Anders, 87 Tex., 287; 28 S. W., 274.
- “ Equitable vs. Hazlewood, 12 S. W., 621.
- “ Goldbaum vs. Blum, 15 S. W., 564.
- Vt. Coon vs. Swan, 30 Vt., 6.
- U. S. Crotty vs. Union Mut., 12 S. C. Rep., 749.
- Contra:
- Ind. Amick vs. Butler, 111 Ind., 578; 12 N. E., 518.
- “ Nye vs. Grand Lodge, 36 N. E., 429.
- Md. Rittler vs. Smith, 70 Md., 261; 16 Atl., 890.
- N. Y. Rawles vs. Amer. Mut., 27 N. Y., 282.
- “ Olmsted vs. Keyes, 85 N. Y., 593, 598.
- Pa. Hill vs. U. S. Life, 25 Atl., 771.
- “ Grant vs. Kline, 9 Atl., 150.
- “ Ulrich vs. Reinoehl, 143 Pa. St., 238; 22 Atl., 862.
- “ Shaffer vs. Spangler, 22 Atl., 865.

17

Proceeds of Mutual Benefit Certificate cannot be reached by creditors of insured member.

- Cal. Swift vs. San Fran. Board, 67 Cal., 567.
- Ky. Masonic Mut. vs. Miller, 13 Bush., 489.

Md. Md. Soc. vs. Clendiner, 44 Md., 429.
 Mich. C. M. Ben. Assn. vs. Priest, 46 Mich., 429.
 Neb. Warner vs. Modern Woodmen, 93 N. W., 397.
 " Bishop vs. Grand Lodge, 112 N. Y., 627.
 " Hellenberg vs. Dist. No. 1, 94 N. Y., 580.
 Ohio. Arthur vs. Odd Fellows, 29 Ohio St., 557.
 " In re Address, Ohio Leg. News, April 3, 1897.
 Pa. Vollman's Appeal, 92 Pa. St., 50.
 " Brethren Soc. vs. Grove, 6 Weekly Note Cas.,
 328.
 Wis. Ballou vs. Gile, 50 Wis., 614.

18

In the following jurisdictions, the proceeds of a mutual benefit certificate are exempt by statute from the claims of creditors of the insured or the creditors of the beneficiary or the creditors of both:

California, Connecticut, District of Columbia, Idaho, Indiana, Kentucky, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Rhode Island, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin and Wyoming.

19

Creditors of insured cannot reach the proceeds of a regular life insurance policy unless premiums were paid or policy was taken out in fraud of creditors.

Ala. Friedman vs. Fennell, 94 Ala., 570.
 " Lehman vs. Gunn, 27 So., 475.
 Col. Hendrie Co. vs. Platt, 56 Pac., 209.
 Fla. Eppinger vs. Canepa, 20 Fla., 262.
 Ga. Hubbard vs. Turner, 20 S. E., 640.
 Ind. Pence vs. Makepeace, 65 Ind., 345.
 Ky. Hise vs. Hartford Life, 11 Ky. L. R., 924.
 " Moorehead's Admr. vs. Mayfield, 58 S. W., 473.
 Mich. Ionia Bk. vs. McLean, 84 Mich., 625.
 Miss. Jones vs. Patty, 18 So., 794.
 Mo. First Nat'l B'k vs. Simpson, 54 S. W., 506.
 Mo. Mut. Life vs. Sandfelder, 9 Mo. App., 285.
 N. Y. Holmes vs. Gilman, 138 N. Y., 369.
 " Dayton vs. Claflin Co., 45 N. Y. Supp., 1005.

- N. Y. Reynolds vs. Aetna Life, 55 N. E., 305.
 Ohio. Weber vs. Paxton, 48 Ohio St., 266.
 U. S. Central Bk. vs. Hume, 128 U. S., 195.

20

By statute in the following jurisdictions the proceeds of a policy payable to the wife, wife and children, or a married woman, cannot be reached by the creditors or representatives of the insured; the amount of premiums paid annually, or the amount of insurance which is so protected, is usually limited:

Alabama, Connecticut, Indiana, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Vermont and Wisconsin. See in this connection:

- 48 Central Law Journal, 307.
 25 Amer. Law Review, 185; also,
 Ala. Tompkins vs. Levy, 87 Ala., 263.
 " Felrath vs. Shonfeld, 76 Ala., 199.
 " Stone vs. Knickerbocker Life, 52 Ala., 589.
 " Fearn vs. Ward, 65 Ala., 333.
 Conn. Bartram vs. Hopkins, 42 At., 645.
 D. C. Central Bk. vs. Hume, 128 U. S., 195.
 Fla. Eppinger vs. Canepa, 20 Fla., 262.
 Ia. Cook vs. Allee, 93 N. W., 93.
 " Larrabee vs. Palmer, 70 N. W., 100.
 " Rhode vs. Bank, 52 Ia., 375.
 " Smealy vs. Felt, 43 Ia., 607.
 Ill. Pinneo vs. Goodspeed, 120 Ill., 536.
 " Pingree vs. Jones, 80 Ill., 177.
 " Ely vs. Ely, 80 Ill., 532.
 " Cole vs. Marple, 98 Ill., 58.
 Ind. Pence vs. Makepeace, 65 Ind., 345.
 Miss. Coates vs. Worth, 17 So., 606.
 " Yale vs. McLaurin, 66 Miss., 461.
 Mo. Judson vs. Walker, 55 S. W., 1083.
 " Pullis vs. Robison, 73 Mo., 201.
 " Reed vs. Painter, 31 S. W., 919.
 " Kiely vs. Hickox, 70 Mo. App., 617.
 N. Y. Milhous vs. Johnson, 4 N. Y. Supp., 199.

- N. Y. Stokes vs. Amerman, 24 N. E., 819.
 " Kittel vs. Domeyer, 70 App. Div., 134.
 " Sherman vs. Allison, 80 N. Y. Supp., 148.
 Ohio. Jacob vs. Continental Life, 1 C. S. C. R., 519.
 Pa. McCutcheon's Appeal, 99 Pa. St., 133.
 S. C. Barron vs. Williams, 36 S. E., 561.
 S. D. Skinner vs. Holt, 69 N. W., 595.
 Tenn. Rose vs. Wortham, 32 S. W., 458.
 " Harvey vs. Harrison, 89 Tenn., 470; 14 S. W.,
 1038.
 Wis. Ellison vs. Straw, 92 N. W., 1094.

21

Endowment Policy not protected by Wife's Policy laws.

- Neb. Talcott vs. Fields, 34 Neb., 611; 52 N. W., 400.
 Contra:
 Cal. Briggs vs. McCullough, 36 Cal., 550.

22

Policy assigned to wife not protected by Wife's Policy laws.

- Ky. Moorehead's Admr. vs. Mayfield, 58 S. W., 473.
 Mich. Ionia Bk. vs. McLean, 84 Mich., 625; 48 N. W.,
 159.
 Ohio. Cross vs. Armstrong, 44 Ohio St., 613; 10 N.
 E., 160.
 Pa. Elliott's Appeal, 50 Pa. St., 75.
 " McCutcheon's Appeal, 99 Pa. St., 133.
 Contra:
 Ill. Cole vs. Marple, 98 Ill., 58.
 Mo. Judson vs. Walker, 55 S. W., 1083.

See also

Statutes of Connecticut and Massachusetts.

23

Proceeds of wife's policy may be reached by her creditors.

- Ia. Murray vs. Wells, 53 Ia., 256.
 Miss. Rice vs. Smith, 72 Miss., 42.
 N. Y. Amberg vs. Manhattan Life, 63 N. E., 1111.
 " Commercial Travelers vs. Newkirk, 16 N. Y.
 Supp., 177.
 " Wellington vs. Fox, 13 N. Y. Supp., 334.

24

Act July 1, 1898, ch. 541, sec. 70a, 30 Stat. 565.

25

Held that sec. 6 of the Bankr. Act did not apply:

In re Lange, 91 Fed., 361.

In re Steele, 98 Fed., 78.

In re Holden, 114 Fed., 650.

Contra:

Steele vs. Buel, 104 Fed., 968.

26

In re Welling, 113 Fed., 189.

In re Slengluff, 106 Fed., 154.

In re Boardman, 103 Fed., 783.

In re Diack, 100 Fed., 770.

Where policy had no cash surrender value,
see

Ga. Morris vs. Dodd, 36 S. E., 83.

In re Buelow, 98 Fed., 86.

27

As to Bankruptcy, see also the note to
Morris vs. Dodd, in 5 Lawyers' R. A.,
33; also, Haskell vs. Equitable, 63 N.
E., 899.

28

Policy payable to "heirs, executors, administrators or assigns," Construction of.

Ga. Rawson vs. Jones, 52 Ga., 458.

N. Y. Griswold vs. Sawyer, 8 N. Y. Supp., 517.

29

Policy payable to "Estate" of insured, Construction of.

Ky. Basye vs. Adams, 81 Ky., 368.

Mass. Daniel's Exr. vs. Pratt, 143 Mass., 216.

30

"Heirs" in life insurance contract means those who are entitled to insured's personality.

Ala. Tompkins vs. Levy, 6 So., 346.

- Ark.....Johnson vs. Sup. Lodge, 53 Ark., 242; 13 S.
W., 794.
- Conn.....Mullen vs. Reed, 64 Conn., 240; 29 At., 478.
- Ga.....Hubbard vs. Turner, 20 S. E., 640.
- Ill.....Richards vs. Miller, 62 Ill., 420.
- “.....Rawson vs. Rawson, 52 Ill., 62.
- “.....Alexander vs. Northwestern, 18 N. E., 556.
- Ky.....Weisert vs. Muehl, 81 Ky., 336.
- Mass.....Sweet vs. Dutton, 109 Mass., 589, 591.
- “.....Houghton vs. Kendall, 7 Allen, 72.
- “.....Codman vs. Krell, 152 Mass., 214; 25 N. E., 90.
- Me.....Mace vs. Cushman, 45 Me., 250.
- Mich.....Lyons vs. Yerex, 100 Mich., 214; 58 N. W., 112.
- N. J.....Welsh vs. Crater, 32 N. J. Eq., 177.
- “.....Leavitt vs. Dunn, 28 Atl., 590.
- “.....Britton vs. Sup. Council, 46 N. J. Eq., 102; 18
At., 675.
- N. Y.....Bishop vs. Grand Lodge, 112 N. Y., 627; 20 N.
E., 562.
- “.....Walsh vs. Walsh, 20 N. Y. Supp., 933.
- “.....Knights Templars vs. Greene 79 Fed., 461.
- Ohio.....Young Men's Assn. vs. Pollard, 3 Ohio Cir.
Ct., 577.
- “.....In re Anders, 6 Ohio Dec., 174.
- Pa.....N. W. Masonic vs. Jones, 154 Pa. St., 99; 26
At., 253.
- “.....Ely's Appeal, 84 Pa. St., 241.
- Tex.....Hanna vs. Hanna, 30 S. W., 820.
- But see:—
- Ia.....Phillips vs. Carpenter, 44 N. W., 898.
- Ill.....Gauch vs. St. Louis Mut., 88 Ill., 251.

31

*Policy payable to “Legal Representatives,” Construc-
tion of.*

- Ia.....Kelley vs. Mann, 56 Ia., 625; 10 N. W., 211.
- Ill.....Johnson vs. Van Epps, 100 Ill., 551.
- “.....People vs. Phelps, 78 Ill., 147.
- Mass.....Wason vs. Colburn, 99 Mass., 342.
- Minn.....Walter vs. Odd Fellows, 42 Minn., 204; 44 N.
W., 57.

- N. Y. Sulz vs. Mut. Reserve, 40 N. E., 242.
 Tex. Pittel vs. Fidelity Mut., 86 Fed., 255.
 But see:—
 Minn. Schultz vs. Citizens Mut., 61 N. W., 331.
 Mo. Loos vs. John Hancock Co., 41 Mo., 538.
 N. Y. . . . Griswold vs. Sawyer, 125 N. Y., 411; 26 N. E.,
 464.
 " Hirsh vs. Mayer, 59 N. E., 89.
 Tenn. Rose vs. Wortham, 32 S. W., 458.

32

"If living" means living at the time of insured's death.

- Colo. Chartrand vs. Brace, 16 Colo., 19; 26 Pac., 152.
 Tex. Thomas vs. Leake, 67 Tex., 469; 3 S. W., 703.

33

There is no Presumption of Survivorship—the Burden of Proof is upon the party asserting survivorship.

- Me. Johnson vs. Merithew, 80 Me., 111; 13 At., 132.
 Md. Cowman vs. Rogers, 73 Md., 403; 21 At., 64.
 Mass. Fuller vs. Linzee, 135 Mass., 468.
 Mo. Sup. Council vs. Kacer, 69 S. W., 671.
 " U. S. Casualty Co. vs. Kacer, 69 S. W., 470.
 N. Y. Newell vs. Nichols, 75 N. Y., 78.
 Tex. Hildebrandt vs. Ames, 66 S. W., 128.
 " Males vs. Sovereign Camp, 70 S. W., 108.
 " Paden vs. Briscoe, 81 Tex., 503; 17 S. W., 42.

See also in this connection:—

- 1 Greenleaf's Ev., sec. 29, 30; Best Ev., 304; 2
 Whart. Ev., Sec. 1280; 2 Kent's Comm.,
 572.

But see:—

- Louisiana Civ. Code, art. 930-933; 76 Cal., 649.

34

"Relatives" includes those by marriage as well as those by blood.

- Ia. Simcoke vs. Grand Lodge, 84 Ia., 383; 51 N.
 W., 8.
 Me. Spear vs. Robinson, 29 Me., 531.

- Mass.....Anthony vs. Mass. Assn., 158 Mass., 322; 33 N. E., 577.
 N. J.....Bennett vs. Van Ripper, 47 N. J. Eq., 563; 22 At., 785.
 But see:—
 Mass.....Esty vs. Clark, 101 Mass., 36.
 Kimball vs. Story, 108 Mass., 582.
 Pa.....Storey vs. Wheatley, 1 Pa. St., 506.

35

"Relatives" does not include an illegitimate child.

- Mass.....Lavigne vs. Ligue des Patriotes, 178 Mass., 25.

36

"Dependents" includes those actually dependent upon insured for support.

- Ill.....Palmer vs. Welch, 132 Ill., 141; 23 N. E., 412.
 Alexander vs. Parker, 144 Ill., 355; 33 N. E., 183.
 Ky.....Wolf vs. Pearce, 45 S. W., 865.
 Mass.....Elsey vs. Odd Fellows, 142 Mass., 224.
 McCarthy vs. Sup. Lodge, 153 Mass., 314; 26 N. E., 866.
 Sup. Court vs. Perry, 140 Mass., 580; 5 N. E., 634.
 Mich.....Carmichael vs. N. W. Assn., 51 Mich., 494.
 Mo.....Wagner vs. St. Francis Soc., 70 Mo. App., 161.
 N. J.....Sup. Council vs. Smith, 45 N. J. Eq., 466; 17 At., 770.
 N. Y.....Hanley vs. Supreme Tent, 38 Misc., 161.
 Tex.....Grand Lodge vs. Bollman, 53 S. W., 829.
 Wis.....Ballou vs. Gile, 50 Wis., 614; 7 N. W., 561.

37

"Dependents" does not include a creditor.

- Skillings vs. Mass. Assn., 146 Mass., 217; 15 N. E., 566.

38

"Dependents" does not include a concubine, even though actually dependent.

- Mo.....Grand Lodge vs. Hanses, 81 Mo. App., 545.

Mo.....Keener vs. Grand Lodge, 36 Mo. App., 543.
Tex.....West vs. Grand Lodge, 37 S. W., 966.

39

"Dependents" includes a woman living bona fide with insured, believing herself to be legally married.

Ind.....Sup. Lodge vs. Hutchinson, 33 N. E., 816.
Mich.....Sup. Tent vs. McAllister, 92 N. W., 770.
N. Y.....Story vs. Assn., 95 N. Y., 474.

40

Divorce does not terminate wife's interest in a regular life insurance policy.

Col.....Overhiser vs. Overhiser, 59 Pac., 75.
Conn.....Phoenix Ins. Co. vs. Dunham, 46 Conn., 79.
Mo.....McKee vs. Phoenix Mut. Ins. Co., 28 Mo., 383.
Ohio.....In re Insurance Policy, 7 Ohio N. P., 527.
".....Overhiser's Admx. vs. Overhiser, 57 N. E., 965.
R. I.....Aetna Life vs. Mason, 14 R. I., 583.
U. S.....Conn. Mut. vs. Schaeffer, 94 U. S., 457.

41

Divorce a mensa et thoro does not terminate wife's interest in mutual benefit certificate.

N. J.....Sup. Council, A. L. of H., vs. Smith, 17 At., 770; 45 N. J. Eq., 466.

42

Absolute divorce terminates interest of wife in mutual benefit certificate.

Mass.....Tyler vs. Odd Fellows' Asn., 145 Mass., 134; 13 N. E., 360.
Mo.....Order of Ry. Conductors vs. Koster, 55 Mo. App., 185.
".....Order of Ry. Conductors vs. Lally, 3 Mo. Legal News, 136.
Tex.....Schonfield vs. Turner, 75 Tex., 324.

- But see:—
- Cal.....Courtois vs. Woodmen of the World, 67 Pac.,
970.
Col.....Overhiser vs. Overhiser, 59 Pac., 75.
Ohio.....Sup. Commandery vs. Everding, 20 Ohio Cir.
Ct., 689.

43

"Wife" means lawful wife.

- Me.....Bolton vs. Bolton, 73 Me., 299.
Mo.....Ashford vs. Metropolitan Life, 2 Mo. App., 766.
".....Grand Lodge vs. Elsner, 26 Mo. App., 108.
N. Y.....Schnook vs. Sons of Benjamin, 24 N. Y. Wkly.
Digest, 348.
But see:—
Ind.....Sup. Lodge vs. Hutchinson, 33 N. E., 816.
Pa.....Overbeck vs. Overbeck, 25 At., 646.

44

"Widow" means wife of insured who survives him.

- D. C.....Masonic Mut. Ben. Assn. vs. McAuley, 2
Mackey, 70.
La.....Phelan vs. Phelan, 21 Ins. L. J., 93.
Me.....Small vs. Jose, 86 Me., 120.

45

*Policy payable to "wife and children" Beneficiaries
take per capita.*

- Cal.....Heydenfeld vs. Jacobs, 40 Pac., 492.
Ind.....Milburn vs. Milburn, 83 Ind., 55.
Kan.....Felix vs. Grand Lodge, 31 Kan., 81; 1 Pac., 281.
La.....Tutorship of Crane, 17 So., 431; 47 La. Ann.,
896.
Me.....Cragin vs. Cragin, 66 Me., 512.
Mass.....Gould vs. Emerson, 99 Mass., 154.
".....Jackman vs. Nelson, 147 Mass., 300; 17 N. E.,
529.
Tex.....N. Y. Life vs. Ireland, 14 S. W., 617.
Wis.....Taylor vs. Hill, 56 N. W., 738.

46

*Policy payable to "wife and children" Beneficiaries.
take according to Statute of Distributions.*

- Ky.....Johnson vs. Johnson, 57 S. W., 469.
 ".....Kelly vs. Ball, 19 S. W., 581.
 ".....McLin vs. Calvert, 78 Ky., 472.
 Tenn.....Goslin vs. Caldwell, 69 Tenn., 474.

47

The word "Children" does not include Grandchildren.

- Ala.....Russell vs. Russell, 64 Ala., 500.
 Ala.....Continental Ins. Co. vs. Webb, 54 Ala., 500.
 Mass.....Thompson vs. Ludington, 104 Mass., 193.
 N. J.....Feit's Exr. vs. Vanatta, 21 N. J. Eq., 84.
 N. Y.....Lane vs. De Mets, 13 N. Y. Supp., 347.
 ".....Lerch vs. Freutel, 73 N. Y. Supp., 1078.
 ".....U. S. Trust Co. vs. Mut. Ins. Co., 115 N. Y.,
 152; 21 N. E., 1025.
 ".....Walsh vs. Mut. Life, 133 N. Y., 408; 31 N. E.,
 228.
 Ohio.....Frank vs. Bauman, 54 Ohio St., 621.
 Pa.....Hallowell vs. Phipps, 2 Wharton, 376.
 ".....In re Steinmetz's Estate, 45 At., 663.
 R. I.....Winsor vs. Odd Fellows, 13 R. I., 149.
 Wis.....Elgar vs. Equitable, 88 N. W., 927.

48

The word "Children" includes Grandchildren.

- Conn.....Continental Ins. Co. vs. Palmer, 42 Conn., 60.
 Ia.....Estate of Conrad, 56 N. W., 535; 89 Ia., 535.
 Ky.....Duvall vs. Goodson, 79 Ky., 224.
 ".....Nuchols vs. Ky. Mut., 16 Ky. L. R., 270.
 ".....Sup. Council vs. Densford, 56 S. W., 172.
 Mich.....Voss vs. Conn. Mut., 77 N. W., 697.
 N. C.....Suggs vs. Hooker, 102 N. C., 115; 8 S. E., 919.
 Tenn.....Glenn vs. Burns, 45 S. W., 785.

49

*Adopted child will not take under a policy payable to
"Children" unless such is the intent.*

- Me.....Martin vs. Aetna Life, 73 Me., 25.



50

"Children" includes afterborn Children.

- Ala.....Roquemore vs. Dent, 33 So., 178.
Mich.....Union Mut. vs. Montgomery, 70 Mich., 587; 38
N. W., 588.
Tex.....Thomas vs. Leake, 67 Tex., 469; 3 S. W., 703.
4 Kent Comm., 412.
2 Redf. on Wills, 10.
2 Washb. Real Property, 654.
But see:—
R. I.....Conn. Mut. vs. Baldwin, 15 R. I., 106; 23 At.,
105.

51

"Where Children are designated by name, afterborn child takes no share of proceeds.

- Ia.....Spry vs. Williams, 82 Ia., 61; 47 N. W., 890.
Minn.....Hanson vs. Minn. Assn., 60 N. W., 1091.
N. C.....Scull vs. Aetna Life, 43 S. E., 504.

52

"Children" includes Children of insured by a former or subsequent wife.

- Mass.....Jackman vs. Nelson, 17 N. E., 529.
Minn.....Ricker vs. Charter Oak, 27 Minn., 93.
Mo.....McDermott vs. Centennial Assn., 24 Mo. App.,
73.
".....State Life vs. Redman, 91 Mo. App., 49.
Tex.....Evans vs. Opperman, 76 Tex., 273; 13 S. W.,
312.

53

"Children" does not include Children of wife by a former husband.

- Ia.....Koehler vs. Centennial Assn., 66 Ia., 325.

54

"Their Children" means children of insured by his then wife.

- N. H.....Aetna Life vs. Clough, 44 Atl., 520.

- N. Y.....Lockwood vs. Bishop, 51 How. Pr., 221; 18 Ins.
L. J., 491.
Tex.....Evans vs. Opperman, 76 Tex. 273; 13 S. W.,
312
But see:—
Va.....Stigler vs. Stigler, 77 Va., 163.

55

Interest of Beneficiary becomes vested upon the death of the insured.

- Col.....Chartrand vs. Brace, 16 Col., 19; 26 Pac. 152.
Mich.....Union Assn. vs. Montgomery, 70 Mich., 587;
38 N. W., 588.
Minn.....Kottman vs. Minn. Soc., 68 N. W., 732.
N. Y.....Aiken vs. Assn., 13 N. Y. Supp., 579.
Ore.....I. O. F. vs. Keliher, 59 Pac., 759.
Tex.....Thomas vs. Leake, 67 Tex., 469; 3 S. W., 703.

56

In Regular Life Insurance the Beneficiary has a vested interest unless policy provides otherwise.

- Ala.....Waldrun vs. Waldrun, 76 Ala., 285.
Ark.....Franklin Life vs. Galligan, 73 S. W., 102.
Cal.....Yore vs. Booth, 42 Pac., 808.
Conn.....Chapin vs. Fellows, 36 Conn., 132.
“.....Lemon vs. Phoenix Mut., 38 Conn., 294.
D. C.....Wash. Bk. vs. Hume, 128 U. S., 195.
Ill.....Glanz vs. Gloeckler, 104 Ill., 573.
Ind.....Holland vs. Taylor, 111 Ind., 125.
Ia.....Willmaster vs. Cont. Life., 66 Ia., 417.
Ky.....Mut. Ben. vs. Dunn, 51 S. W., 20.
La.....Lambert vs. Penn. Mut., 24 So. 16; 50 La. Ann.,
1027.
“.....Pilcher vs. N. Y. Life, 33 La. Ann., 332.
Me.....Duffy vs. Met. Life, 47 Atl., 905.
“.....Laughlin vs. Norcross, 53 At., 834.
“.....Nat. Life vs. Halsey, 78 Me., 268.
“.....Small vs. Jose, 86 Me., 120; 29 At., 976.
Mass.....Boyden vs. Mass. Co., 153 Mass., 544.
“.....Pingree vs. Nat. Life, 144 Mass., 374; 11 N. E.,
502.

- Mich.....Lockwood vs. Mich. Ins. Co., 66 N. W., 229;
108 Mich, 334.
Minn.....Allis vs. Ware, 28 Minn., 166.
".....Ricker vs. Charter Oak, 6 N. W., 771; 27
Minn., 193.
Miss.....Jackson Bk. vs. Williams, 26 So. 965; 77 Miss.,
398.
N. H.....City Bk. vs. Whittle, 63 N. H., 587.
N. J.....Landrum vs. Knowles, 22 N. J. Eq., 594.
".....L. E. Assn. vs. Winterstein, 44 Atl., 199.
N. Y.....Foley vs. Mut. Life, 138 N. Y., 333.
".....Garner vs. German Life, 110 N. Y., 266.
".....Ferdon vs. Canfield, 104 N. Y. 143.
".....Whitehead vs. N. Y. Life, 102 N. Y., 143.
N. C.....Hooker vs. Sugg., 102 N. C., 115.
Ohio.....Man. Life vs. Smith, 44 Ohio St., 156.
Pa.....Brown's Appeal, 125 Pa. St., 303.
".....Mattlack vs. Mut. Life, 36 At., 1082; 180 Pa.
St., 360.
R. I.....Conn. Mut. vs. Baldwin, 15 R. I., 106; 23 At.,
105.
S. C.....McAuley vs. Nat. Bk., 27 S. C., 215.
Tex.....Irwin vs. Trav. Ins. Co., 39 S. W., 1097.

57

Where the Beneficiary may be changed without his consent, he has no vested interest.

- Cal.....Hoeft vs. Sup. Lodge, 45 Pac., 185.
Col.....Hill vs. Groesbeck, 67 Pac., 167.
Ga.....Bilbro vs. Jones, 29 S. E., 118.
Ill.....Johnson vs. Van Epps, 110 Ill., 551.
Ind.....Holland vs. Taylor, 111 Ind., 121.
".....Masonic Mut. vs. Burkhart, 110 Ind., 189.
".....Presbt. Fund vs. Allen, 106 Ind., 593.
Ia.....Schmidt vs. Ia. Assn., 82 Ia., 304; 47 N. W.,
1032.
Kan.....Titsworth vs. Titsworth, 20 Pac., 213.
Ky.....Schillinger vs. Boes, 85 Ky., 357.
".....Duvall vs. Goodsen, 79 Ky., 224.
Md.....Md. Soc. vs. Clendenin, 44 Md., 428.

- Mass.....Marsh vs. Sup. Council, 21 N. E., 1070.
 Mich.....Met Life vs. O'Brien, 52 N. W., 1012; 92 Mich.,
 584.
 ".....Union Assn. vs. Montgomery, 38 N. W., 588;
 70 Mich., 587.
 Minn.....Finch vs. Grand Grove, 60 Minn., 308; 62 N.
 W., 384.
 ".....Schoenau vs. Grand Lodge, 88 N. W., 999.
 Mo.....Masonic Mut. vs. Bunch, 19 S. W., 25; 109 Mo.,
 560.
 ".....Wells vs. Covenant Mut., 29 S. W., 607.
 N. H.....K. O. vs. Watson, 64 N. H., 517.
 N. J.....Tepper vs. Sup. Council, 45 At., 111.
 N. Y.....Sabin vs. Phinney, 31 N. E., 1087; 134 N. Y.,
 423.
 Pa.....Fisk vs. Equit. Aid Union, 11 At., 84.
 ".....Hamilton vs. Royal Arcan., 189 Pa. St., 273; 42
 At., 186.
 Tex.....Byrne vs. Casey, 70 Tex., 247; 8 S. W., 38.
 ".....Splawn vs. Chew, 60 Tex., 532.
 Wash.....Thomas vs. Grand Lodge, 41 Pac., 882; 12
 Wash., 500.
 ".....Cade vs. Woodmen of World, 67 Pac., 603.
 Fed.....Hopkins vs. N. W. Met., 99 Fed., 199.
 ".....Gentry vs. K. of H., 23 Fed., 718.
 ".....Lamont vs. Grand Lodge, 31 Fed., 177.

58

Beneficiary may acquire a vested interest by a contract with the insured.

- Cal.....Grimbley vs. Harold, 57 Pac., 558.
 N. Y.....Maynard vs. Vandewerker, 24 N. Y. Supp., 932.
 See also:—
 ".....Smith vs. Nat. Ben. Soc., 123 N. Y., 85; 25
 N. E., 197.
 Contra:—
 Mo.....Masonic Assn. vs. Bunch, 109 Mo., 560; 19
 S. W., 25.
 See also statutes of Idaho, Indiana, Iowa
 and Missouri.

59

Possession of policy or certificate by Beneficiary does not, of itself, give him a vested interest.

- Ga. Nally vs. Nally, 74 Ga., 669.
- Ill. Glanz vs. Gloeckler, 104 Ill., 573.
- Ia. Hirschl vs. Clark, 81 Ia., 200.
- Pa. Beatty's Appeal, 15 At., 861.
- " Fisk vs. Equit. Union, 11 At., 84.
- Tex. Byrne vs. Casey, 70 Tex., 247; 8 S. W., 38.
- Va. Leftwich vs. Wells, 43 S. E., 364.

60

Vested interests of minor children cannot be defeated even though they consent.

- N. Y. Foley vs. Mutual Life, 138 N. Y., 333.
- Pa. Brown's Appeal, 46 Legal Int., 361.
- Fed. Brockhaus vs. Kenna, 7 Fed., 609.

61

Policy payable to "Wife and, in the event of her prior death, to the Children" of insured—interests of both Wife and Children are vested but contingent. (See also 62, 84.)

- Ala. Roquemore vs. Dent., 33 So., 178.
- Mass. Millard vs. Brayton, 59 N. E., 436.
- N. Y. Whitehead vs. N. Y. Life, 102 N. Y., 143.
- Pa. Entwistle vs. Travelers, 51 At., 759.

62

Policy payable to "Wife and, in the event of her prior death, to the Children," of insured. Only such children who survive the mother upon her death prior to the insured share in the policy. Interest of child dying after the mother, but before the insured, goes to such child's personal representatives. (See 61, 84.)

- Ala. Cont. Life vs. Webb, 54 Ala., 688.
- Ala. Roquemore vs. Dent., 33 So., 178.
- Mass. Millard vs. Brayton, 59 N. E., 436.
- N. H. Smith vs. Aetna Life, 44 At., 531.
- N. Y. U. S. Trust Co. vs. Mut. Ben., 115 N. Y., 152.

N. Y... .. Walsh vs. Mut. Life, 133 N. Y., 408

Contra:

Tenn..... Glenn vs. Burns, 45 S. W., 785.

63

Vested interests are not defeated by a wrongful surrender of the policy.

Conn..... Chapin vs. Fellows, 36 Conn., 132.

“ Lemon vs. Phoenix Mut., 38 Conn., 298.

Minn..... Ricker vs. Charter Oak, 27 Minn., 193.

N. Y..... Stillwell vs. Mut. Life, 72 N. Y., 385.

“ Whitehead vs. N. Y. Life, 102 N. Y., 143.

Fed..... Singer vs. Charter Oak, 22 Fed., 774.

“ Timayenis vs. Union Mut., 21 Fed. 223.

“ Union Mut. vs. Stevens, 19 Fed., 671.

64

Member in Mutual Benefit Society is generally given the right to change his Beneficiary.

Mo..... Masonic Assn. vs. Bunch, 109 Mo., 560; 19 S. W., 25.

See also cases in 68.

65

States having statutes giving members of mutual benefit societies the right to change the beneficiary:

Idaho, Indiana, Iowa, Maryland, Massachusetts, Michigan, Maine, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New York and South Dakota.

66

Where insured has only the right to apportion the benefit fund, he cannot change the Beneficiary.

Ky..... Ry. Grangers vs. Howe, 9 Ky. Law Rep., 198.

67

Where it is prohibited by express provision in the contract, the Beneficiary of a mutual benefit certificate cannot be changed.

Ind..... Mason vs. Mason, 63 N. E., 578.

“ Presby. Fund vs. Allen, 106 Ind., 595.

Ind..... Sup. Lodge vs. Knight, 117 Ind., 489.
 Kan..... Olmstead vs. Masonic Mut., 37 Kan., 93.
 Ky..... Van Bibber vs. Van Bibber, 82 Ky., 347.
 Tex..... Thomas vs. Leake, 67 Tex., 472.

68

Membership in a Mutual Benefit Society gives a member the right to change his Beneficiary even though the contract is silent as to such right.

Ill..... Benton vs. Brotherhood, 146 Ill., 570.
 " Delany vs. Delany, 51 N. E., 961.
 " Johnson vs. Van Epps, 110 Ill., 551-8.
 Ind..... Holland vs. Taylor, 111 Ind., 121; 12 N. E., 116.
 " Masonic Mut. vs. Burkhart, 110 Ind., 189; 11 N. E., 449; 10 N. E., 79.
 " Presby. Fund vs. Allen, 106 Ind., 583; 7 N. E., 317.
 Ia..... Carpenter vs. Knapp, 101 Ia., 712; 70 N. W., 764.
 " Schmidt vs. Assn., 82 Ia., 304; 47 N. W., 1032.
 " Wendt vs. Legion of Honor, 72 Ia., 682; 34 N. W., 470.
 Ky..... Duvall vs. Goodson, 79 Ky., 224.
 Md..... Md. Soc. vs. Clendenin, 44 Md., 429.
 Mich..... Catholic Assn. vs. Priest, 46 Mich., 429; 9 N. W., 481.
 " Union Mut. vs. Montgomery, 70 Mich., 587; 38 N. W., 588.
 Minn..... Richmond vs. Johnson, 28 Minn., 447; 10 N. W., 596.
 Mo..... Aid Soc. vs. Lewis, 9 Mo. App., 412.
 " Masonic Assn. vs. Bunch, 109 Mo., 560; 19 S. W., 25.
 N. Y..... Hellenberg vs. Ind. Order, 94 N. Y., 580.
 " Sabin vs. Grand Lodge, 134 N. Y., 432; 31 N. E., 1087.
 Tex..... Byrne vs. Casey, 70 Tex., 247; 8 S. W., 38.
 " Splawn vs. Chew, 60 Tex., 532.
 Wash..... Thomas vs. Grand Lodge, 41 Pac., 882.
 Wis..... Ballou vs. Gile, 50 Wis., 614; 7 N. W., 561.
 " Detrick vs. Madison Relief, 45 Wis., 84.

- Fed.....Gentry vs. Sup. Lodge, 23 Fed., 719.
 "Lamont vs. Grand Lodge, 31 Fed., 177.
 Eastman vs. Prov. Mut., 20 Cent. L. J., 393.
 But see:
 Ark.....Johnson vs. Hall, 55 Ark., 210; 17 S. W., 874.
 N. J.....Assn. vs. Winterstein, 44 At., 199.

69

Beneficiary of Regular Life Insurance Policy may be changed if permitted by the terms of the contract. (See 80.)

- Ky.....Hopkins vs. Hopkins, 92 Ky., 324; 17 S. W., 864.
 N. Y.....Hutchins vs. Miner, 46 N. Y., 456.

70

The method of changing the Beneficiary, as set forth in the Contract, Charter, Constitution or By-Laws, must be followed in order to make a valid change. (See 71, 72, 74, 75, 76, 78, 79.)

- Cal.....Conway vs. Sup. Council, 63 Pac., 727.
 Colo.....Rolands vs. McHatten, 16 Colo., 203; 27 Pac., 254.
 Ill.....Highland vs. Highland, 109 Ill., 366; 13 Ill. App., 510.
 Ind.....Holland vs. Taylor, 111 Ind., 127.
 "Presby. Fund vs. Allen, 160 Ind., 597.
 Ia.....Modern Woodman vs. Little, 86 N. W., 216.
 "Schuman vs. A. O. U. W., 82 N. W., 331.
 "Stephenson vs. Stephenson, 21 N. W., 19; 64 Ia., 534.
 "Wendt vs. Ia. L. of H., 72 Ia., 682; 34 N. W., 470.
 Kan.....Olmstead vs. Masonic Mut., 37 Kan., 93; 14 Pac., 449.
 Ky.....Basye vs. Adams, 81 Ky., 363.
 "Ky. Masonic Mut. vs. Miller, 3 Bush, 489.
 "Leaf vs. Leaf, 92 Ky., 166; 17 S. W., 354.
 "Manning vs. Sup. Lodge, 86 Ky., 136; 5 S. W., 385.

- Mass.....Daniels vs. Pratt, 143 Mass., 216; 10 N. E., 166.
 "McCarthy vs. N. E. Order, 153 Mass., 314; 26
 N. E., 866.
 Mich.....Sup. L. K. of H. vs. Nairn, 60 Mich., 44; 20
 N. W., 826.
 Mo.....Coleman vs. K. of H., 18 Mo. App., 189.
 N. H.....Eastman vs. Prov. Assn., 62 N. H., 552.
 "Mellows vs. Mellows, 61 N. H., 137.
 N. J.....Sup. Council A. L. H. vs. Smith, 45 N. J., 466;
 17 At., 770.
 N. Y.....Gladding vs. Gladding, 56 Hun., 639.
 "Greene vs. Greene, 23 Hun., 478.
 "Ireland vs. Ireland, 42 Hun., 212.
 N. C.....Elliott vs. Whedke, 94 N. C., 115.
 N. C.....Smith vs. Sup. Council, 37 S. E., 159.
 Ore.....Stringham vs. Dillon, 69 Pac., 1020.
 Pa.....Jinks vs. Banner Lodge, 139 Pa. St., 414.
 Pa.....Nat. Mut. Assn. vs. Leopold, 101 Pa. St., 111.
 "Masonic Assn. vs. Jones, 154 Pa. St., 107; 26
 At., 255.
 "Vollman's Appeal, 92 Pa. St., 50.
 Wis.....Berg vs. Damkoehler, 88 N. W., 606.
 Fed.....Gentry vs. K. of H., 23 Fed., 718.
 "Harmon vs. Lewis, 24 Fed., 97; 530.
 "Hotel Men's Mut. Ben. vs. Brown, 33 Fed., 11.

71

If the Beneficiary may be changed, but no particular method is prescribed for making the change, any method showing an intention to change is sufficient. (See 79.)

- Ia.....Hirschl vs. Clark, 81 Ia., 200; 47 N. W., 78.
 Mass.....Atlantic Mut. vs. Gannon, 60 N. E., 933.
 Mo.....Masonic Mut. Ben. vs. Bunch, 109 Mo., 560;
 19 S. W., 25.

72

Where a mutual benefit certificate requires compliance with the "laws of the Society," the laws referred to are those in existence at the time the Change of Beneficiary is attempted.

- Ill.....Sup. Council vs. Franke, 137 Ill., 118; 27 N. E.,
 86.

- R. I. Sup. Council Cath. K. vs. Morrison, 16 R. I.,
468; 17 At., 57.
Tenn. Cath. Knights of Amer. vs. Kuhn, 91 Tenn.,
214; 18 S. W., 385.

73

The insurer may refuse to give his Consent to a proposed Change of Beneficiary, but such refusal must be upon reasonable grounds.

- Mass. Daniels vs. Pratt, 143 Mass., 216.
N. J. Sup. Council vs. Smith, 45 N. J. Eq., 17 At.,
770.
N. Y. Hellenberg vs. I. O. O. B., 94 N. Y., 583.
" Marcus vs. St. Louis Mut., 68 N. Y., 625.
" Murphy vs. Met. Assn., 55 N. Y. Supp., 620.
Pa. Jinks vs. Banner Lodge, 21 At., 4; 139 Pa. St.,
414.
" Nat. Mut. vs. Lupold, 101 Pa. St., 111.
Fed. Hotel Men vs. Brown, 33 Fed., 11.

74

An insurer may Waive a Strict Compliance with the rules and method of Changing the Beneficiary, and, if a change is so made, it is valid and the original beneficiary cannot complain.

- Cal. Bowman vs. Moore, 87 Cal., 306; 25 Pac., 409.
" Adams vs. Grand Lodge, 125 Cal., 321; 38
Pac., 914.
Ill. Martin vs. Stubbings, 126 Ill., 387.
Ind. Holland vs. Taylor, 111 Ind., 121.
" Presby. Fund vs. Allen, 106 Ind., 593.
Ia. Schmidt vs. Ia. Knights, 47 N. W., 1032.
" Simcoke vs. Grand Lodge, 51 N. W., 8; 84 Ia.,
383.
" Wendt vs. Ia. L. of H., 72 Ia., 682.
Kan. Titsworth vs. Titsworth, 40 Kan. 571; 20 Pac.,
213.
Ky. Duvall vs. Goodson, 79 Ky., 224.
" Manning vs. A. O. U. W., 5 S. W., 385; 86 Ky.,
136.
Mass. Anthony vs. Mass. Assn., 158 Mass., 322; 33
N. E., 577.

- Mass. Marsh vs. Sup. Council, 144 Mass., 512; 21 N. E., 1070.
 " Sup. Council vs. Perry, 140 Mass., 580.
 Mich. Allgemeiner Bund vs. Adamson, 92 N. W., 786.
 Mich. Supreme Court vs. Davis, 88 N. W., 874.
 Mo. Stewart vs. Sup. Council, 36 Mo. App., 319.
 N. H. Brown vs. Mansur, 64 N. H., 39; 5 At., 768.
 " Barton vs. Assn., 63 N. H., 535.
 " K. of H. vs. Watson, 64 N. H., 517.
 N. Y. Gladding vs. Gladding, 8 N. Y. Supp., 880.
 Pa. Nat. Soc. vs. Lupold, 101 Pa. St., 111.
 R. I. John Hancock vs. White, 40 At., 5.
 Tenn. Schardt vs. Schardt, 45 S. W., 340.
 Tex. Byrne vs. Casey, 70 Tex., 247.
 " Splawn vs. Chew, 60 Tex., 532.
 Wis. McGowan vs. I. O. F., 80 N. W., 603.
 Fed. Sup. Conclave vs. Cappella, 41 Fed., 1.

75

Where the insured has done all in his power to make a Change of Beneficiary, but dies before the Change is actually made, or where it is impossible for the insured to perform all the requirements, a Court of Equity will consider the Change as valid.

- Cal. Jory vs. Sup. Council, 105 Cal., 20; 38 Pac., 524.
 Ga. Nally vs. Nally, 74 Ga., 669.
 Ind. Isrigg vs. Schooley, 125 Ind., 94; 25 N. E., 151.
 Ia. Hirschl vs. Clark, 81 Ia., 200.
 " Schmidt vs. Iowa Assn., 82 Ia., 304.
 Kan. Heydorf vs. Conrack, 7 Kan. App., 202; 52 Pac., 700.
 Pa. Jinks vs. Banner Lodge, 139 Pa. St., 414.
 Mass. Marsh vs. A. L. O. H., 149 Mass., 512.
 Mich. A. O. U. W. vs. Kohler, 63 N. W., 897.
 " Grand Lodge vs. Child, 70 Mich., 163; 38 N. W., 1.
 " Grand Lodge vs. Noll, 90 Mich., 37; 51 N. W., 268.
 Miss. Hall vs. Allen, 22 So., 4.
 Mo. Nat. Soc. vs. Kirgin, 28 Mo. App., 80.
 N. H. Sanborn vs. Black, 35 At., 942

- N. Y. Fink vs. Society, 68 N. Y., Supp., 80.
 " Lahey vs. Lahey, 174 N. Y., 146; 66 N. E., 670.
 R. I. John Hancock vs. White, 40 At., 5.
 Fed. Sup. Council vs. Cappella, 41 Fed., 1.

76

Where the insured wilfully or carelessly failed to take all of the steps necessary to Change the Beneficiary, the attempt to Change was held ineffectual.

- N. Y. Eagan vs. Eagan, 68 N. Y. Supp., 777.
 " Ireland vs. Ireland, 42 Hun, 212.
 Ore. Stringham vs. Dillon, 69 Pac., 1020.
 Pa. Hamilton vs. Royal Arcan., 42 At., 126.
 See also cases in 70.

77

Fraud, or undue influence inducing a Change of Beneficiary, is immaterial, so far as the Original Beneficiary is concerned.

- Cal. Hoeft vs. Sup. Lodge, 45 Pac., 185; 113 Cal., 91.
 Ill. Pingree vs. Jones, 80 Ill., 181.
 See also:
 Ia. Schuman vs. Sup. Lodge, 81 N. W., 717.
 N. Y. Smith vs. Harmon, 59 N. Y. Supp., 1044
 Tenn. Goodrich vs. Bohan, 52 S. E., 1105.

78

The Beneficiary cannot be Changed by the insured's Will unless the contract prescribes no method of making the change or expressly permits a change by Will. (See 79.)

- Cal. Silva vs. Sup. Council, 42 Pac., 32.
 Ind. Holland vs. Taylor, 111 Ind., 121; 12 N. E., 116.
 Ia. Hiner vs. Ia. L. of H., 78 Ia., 245; 43 N. W., 185.
 " Stephenson vs. Stephenson, 64 Ia., 534.
 Ky. Ins. Co. vs. Miller, 13 Bush., 489.
 Mass. Daniels vs. Pratt, 143 Mass., 216; 10 N. E., 166.
 N. Y. Fink vs. Fink, 64 N. E., 506.

Ohio.....Charch vs. Charch, 49 N. E., 408.
Pa.....Vollman's Appeal, 92 Pa. St., 50.

79

Where no method of Changing the Beneficiary is prescribed, or where no beneficiary has ever been named, the insured may direct in his Will to whom the proceeds shall be paid.

Cal.....Order of M. C. vs. Griest, 76 Cal., 494; 18
Pac., 652.
Mo.....Masonic Mut. vs. Bunch, 109 Mo., 560; 19
S. W., 25.

80

Where a man takes out insurance on his own life, and pays the premiums himself, he may dispose of the policy in any manner he sees fit, even though there be a beneficiary named in the contract.

Wis.....Clark vs. Durand, 12 Wis., 223.
".....Kerman vs. Howard, 23 Wis., 108.
".....Foster vs. Gile, 50 Wis., 603; 7 N. W., 555.
".....In re. Bretung's estate, 78 Wis., 33; 46 N. W.,
891.
".....Strike vs. Wis., Etc., Co., 95 Wis., 583; 70
N. W., 819.
But see:—
".....Ellison vs. Straw, 92 N. W., 1094.

81

The Beneficiary of a Mutual Benefit Certificate loses his entire interest in the certificate by his Death prior to the insured.

Cal.....In re. Greist, 18 Pac., 654.
".....Sup. Council vs. Gehrenbeck, 124 Cal., 43; 56
Pac., 640.
D. C.....Masonic Mut. vs. McAuley, 2 Mackey, 70.
".....Wash. Assn. vs. Wood, 4 Mackey, 19.
Ill.....Palmer vs. Welch, 132 Ill., 141; 23 N. E., 412.
Kan.....Brew vs. Clement, 48 Kan., 386.

- Mass.....Haskins vs. Kendall, 158 Mass., 224; 33 N. E., 495.
 "L. of H. vs. Perry, 140 Mass., 589; 5 N. E., 636.
 "Boden vs. Assn., 45 N. E., 735.
 Mich.....Lyon vs. Rolfe, 76 Mich., 146-42 N. W., 1094.
 "Wood vs. Lenawee Cir. Judge, 84 Mich., 521.
 Minn.....Gutterson vs. Gutterson, 50 Minn., 258; 52 N. W., 530.
 "Richmond vs. Johnson, 28 Minn., 447.
 Mo.....Expressmen's Soc. vs. Lewis, 9 Mo. App., 415.
 N. J.....Britton vs. Sup. Council, 46 N. J. Eq., 102.
 N. Y.....Brooklyn Masonic Assn. vs. Hanson, 6 N. Y. Supp., 161.
 "Cullen vs. Sup. Tent., 77 Hun, 6.
 "Hellenberg vs. I. O. O. R., 94 N. Y., 580.
 Pa.....Arthars vs. Baird, 8 Pa. County Ct., 67.
 Tenn.....Handwerker vs. Diermeyer, 36 S. W., 869.
 Wis.....Gibbon vs. Wis. Oddfellows, 71 Wis., 547; 37 N. W., 817.
 "Riley vs. Riley, 75 Wis., 464; 44 N. W., 112.
 Contra:
 Ark.....Johnson vs. Hall, 55 Ark., 210; 17 S. W., 874.
 Md.....Expressman's Assn. vs. Hurlock, 46 At., 957.
 "Thomas vs. Cochran, 43 At., 792.
 N.J.....Brown vs. Murray, 35 At., 748.
 Pa.....Clark vs. Aid Union, 6 Pa. County Rep., 321.

82

Upon the Death of a Beneficiary of a Regular Life Insurance Policy his interest in such policy passes to his personal representatives.

- Ala.....Drake vs. Stone, 58 Ala., 133.
 Ark.....Johnson vs. Hall, 55 Ark., 210.
 Conn.....Continental Ins. Co. vs. Palmer, 42 Conn., 60.
 Ind.....Hurley vs. Heist, 86 Ind., 196.
 "Hutson vs. Merrifield, 51 Ind., 24.
 Mass.....Swan vs. Snow, 11 Allen, 224.
 "Bancroft vs. Russell, 31 N. E., 710.
 Minn.....Ricker vs. Charter Oak, 27 Minn., 193-6.
 N. Y.....Hull vs. Hull, 62 How. Pr., 100.
 "U. S. Trust Co. vs. Ins. Co., 115 N. Y., 157; 21 N. E., 1025.

- S. C. McCauley vs. Cent. Nat. Bk., 27 S. C., 215.
 Tex. Evans vs. Opperman, 13 S. W., 312.
 Wis. Ellison vs. Straw, 92 N. W., 1094.
 " Foster vs. Gile, 50 Wis., 603; 8 N. W., 217.
 " Alvord vs. Luckenbach, 82 N. W., 535.
 Contra:
 Ohio. Ryan vs. Rothweiler, 50 Ohio St., 595; 35
 N. E., 697.
 " Frank vs. Bauman, 54 Ohio St., 621.

83

Wherever the Common Law Rule of Survivorship of the Husband applies, the entire interest of a Wife in a life insurance contract will go to her husband who survives her, to the exclusion of her next of kin.

- Minn. Lambertson vs. Bogart, 46 Minn., 409; 49
 N. W., 230.
 N. Y. In re. Negus, 58 N. Y. Supp. 377 (governed by
 N. J. Law).
 " Matter of Warner, 32 N. Y. St., 897.
 " Olmstead vs. Keyes, 85 N. Y., 593.
 " Waldheim vs. John Hancock, 8 Misc., 506; 13
 N. Y. Supp., 577; 28 N. Y. Supp., 766.
 N. C. Simmons vs. Biggs, 5 S. E., 235.
 But see:
 Ind. Harley vs. Heist, 86 Ind., 196.
 " Hutson vs. Merrifield, 51 Ind., 24.
 Me. Libbey vs. Libbey, 37 Me., 359.
 Mo. Shield's Trustee vs. Sharpe, 17 Ins. L. J., 793.
 Pa. Anderson's estate, 85 Pa. St., 202.

84

Policy payable to "Wife and, in the event of her prior death, the Children" of insured—Interest of Children is contingent upon the death of the mother prior to that of the insured, and any child which predeceases the mother loses his entire interest in the policy. (See 61, 62.)

- Mass. Millard vs. Brayton, 59 N. E., 436.
 N. H. Smith vs. Aetna Life, 44 At., 531.
 N. Y. Lockwood vs. Bishop, 18 Ins. L. J., 491.
 " U. S. Trust Co. vs. Mut. Ben., 115 N. Y., 152.

N.Y. . . .Walsh vs. Mut. Life, 133 N. Y., 408; 51 N. E., 228.

Contra:—

Mich. . . .Voss vs. Conn. Mut., 77 N. W., 697.

Pa.In re. Thorne, 33 Pittsburg L. J., 233.

Tenn. . . .Glenn vs. Burns, 45 S. W., 785; 100 Tenn., 295.

85

Where there is more than one Beneficiary of a mutual benefit certificate, they hold as joint tenants with the right of survivorship, and upon the Death of one of the Beneficiaries his interest passes to the survivor or survivors. (See also 81.)

Ill.Covenant Assn. vs. Hoffman, 110 Ill., 603.

Ky.Bell vs. Kinneer, 40 S. W., 686.

“Robinson vs. Duvall, 79 Ky., 83.

Wis.Farr vs. Trustees Grand Lodge A. O. U. W.,
83 Wis., 446.

But see:

Ky.Sup. Council vs. Densford, 56 S. W., 172.

N. C.Hooper vs. Sugg, 8 S. E., 919.

86

Where there is more than one Beneficiary of a Regular Life Insurance Policy, they hold as tenants in common, and, upon the death of one, his interest passes to his personal representative. (See also 56, 82.)

N. H.Smith vs. Aetna Life, 44 At., 531.

N. C.Simmons vs. Biggs, 5 S. E., 235.

87

Marriage of insured will not affect beneficiary's right to the proceeds. (See 88.)

Ill.Benton vs. Brotherhood R. R. B., 34 N. E., 939.

“Highland vs. Highland, 109 Ill., 366.

Mass.Mass. O. of F. vs. Callahan, 146 Mass., 391; 16
N. E., 19.

88

Beneficiary loses his interest upon marriage of the insured if the contract or statute gives wife, or wife and children, the preference to the proceeds.

- N. Y. Sanger vs. Rothschild, 123 N. Y., 577.
 Tenn. Rose vs. Wortham, 95 Tenn., 505; 32 S. W., 458.

89

Where a beneficiary or assignee murders the insured, such beneficiary or assignee, and any one claiming under him, will lose all right to the insurance proceeds; the proceeds will be paid to the insured's personal representative if the insurance be a regular life insurance policy; if a mutual benefit certificate, the proceeds will be paid as if no beneficiary had been designated.

- Ill. Schreiner vs. Ill. Cath. Soc., 35 Ill. App., 576.
 " Holdom vs. Grand Lodge, 43 N. E., 772.
 Ia. Schmidt vs. Northern Life, 83 N. W., 800.
 Va. N. Y. Life vs. Davis, 32 S. E., 475.
 U. S. N. Y. Mut. vs. Armstrong, 117 U. S., 591.
 Canada.... Trudeau vs. Standard Life, 16 Rap. Jud., Que. C. S., 539.
 Eng. Cleaver vs. Mut. F. L. Assn., 8 Times L. R., 139.
 " Prince of Wales Co. vs. Palmer, 25 Beav., 605.
 See Par. 7740 (83); Michigan Insurance Law.

90

The Assignment of a Part of a chose in action is upheld in Equity, if there be Consideration.

- Ga. Daniels vs. Meinhard, 53 Ga., 359.
 Ill. Pomeroy vs. Manhattan Life, 40 Ill., 398.
 Ind. Lapping vs. Duffy, 47 Ind., 51.
 Me. Exchange Bank vs. McLoon, 73 Me., 498.
 Minn. Canty vs. Latterner, 31 Minn., 239.
 Miss. Whitney vs. Cowan, 55 Miss., 626.
 N. J. Public Schools vs. Heath, 15 N. J. Eq., 22.
 N. Y. Risley vs. Phoenix Bk., 83 N. Y., 318.
 Ohio. Stanberry vs. Smythe, 13 Ohio St. (N. S.), 495.

Penn.....Caldwell vs. Hartupee, 70 Pa. St., 74, 79.
Vt.....Clafflin vs. Kimball, 52 Vt., 7.

91

▲ *A Life Insurance Contract is an Assignable chose in action.* (See 103, 104.)

Conn.....Fitzgerald vs. Hartford Ins. Co., 56 Conn., 116.
Ill.....Martin vs. Stubbings, 126 Ill., 387.
Ind.....Bushnell vs. Bushnell, 92 Ind., 503.
".....Harley vs. Heist, 86 Ind., 196.
".....Hutson vs. Merrifield, 51 Ind., 24.
La.....Stuart vs. Sutcliff, 46 La. Ann., 240.
Md.....Hewlett vs. Home, Etc., 74 Md., 350.
".....Hurst vs. Mutual Reserve, 26 At., 956.
".....N. Y. Ins. Co. vs. Flack, 3 Md., 341.
Mass.....Mut. Ins. Co. vs. Allen, 138 Mass., 24.
".....Palmer vs. Merrill, 6 Cush., 282.
".....Pingrey vs. Nat'l Life Ins. Co., 144 Mass., 374.
N. J.....Folk vs. Janes, 49 N. J. Eq., 484.
N. Y.....Cannon vs. N. W. Mut., 29 Hun., 470.
".....Olmstead vs. Keyes, 85 N. Y., 593.
".....Steinback vs. Diepenbrock, 158 N. Y., 24.
Ohio.....Eckel vs. Renner, 41 Ohio St., 232.
R. I.....Clark vs. Allen, 11 R. I., 439.
Va.....Roller vs. Beam, 86 Va., 512.
Wis.....Bursinger vs. Bank, 67 Wis., 75.
U. S.....N. Y. Co. vs. Armstrong, 117 U. S., 591.
".....Spring vs. Ins. Co., 21 U. S., 268.

92

✓ *Mutual Benefit Certificates cannot generally be assigned to a person who could not be the beneficiary.*

Ky.....Basye vs. Adams, 81 Ky., 368.
Mass.....A. L. of H. vs. Perry, 140 Mass., 580.
Mich.....K. of H. vs. Nairn, 60 Mich., 44.
Ohio.....Nat. Mut. Aid vs. Gonser, 43 Ohio St., 1.

93

An Assignment is governed by the Law of the Place where it is made.

Conn.....Conn. Mut. vs. Westervelt, 52 Conn., 586.

- Ill. Pomeroy vs. Manhattan Life, 40 Ill., 398.
 Ind. Criswell vs. Whitney, 13 Ind. App., 67; 41
 N. E., 78.
 " Union Cen. vs. Woods, 11 Ind. App., 335; 37
 N. E., 180.
 Mass. Mut. Life vs. Allen, 138 Mass., 24.
 Mich. Mut. Ben. vs. Bank, 68 Mich., 116.
 N. Y. Barry vs. Equitable, 59 N. Y., 587.
 " Miller vs. Campbell, 140 N. Y., 457; 35 N. E.,
 651.
 Tenn. Pratt vs. Globe Mut. Life, 17 S. W., 352.

94

** The Assignee need have no Insurable Interest, provided the transaction is not a mere cover for a wager.*

- Cal. California Code, Sec. 2764.
 " Curtiss vs. Aetna, 90 Cal., 245.
 " Widamen vs. Hubbard, 88 Fed., 806.
 Col. Sheets vs. Sheets, 4 Col. App. 450; 30 Pac., 310.
 Conn. Fitzgerald vs. Hartford Life, 56 Conn., 116.
 Ga. Union Frat. League vs. Walton, 109 Ga., 1.
 Ill. Bloomington Assn. vs. Blue, 120 Ill., 121; 11
 N. E., 331.
 " Martin vs. Stubbings, 126 Ill., 387.
 " Moore vs. Chicago, etc., Assn. 52 N. E., 882.
 Ind. Metropolitan Life vs. Brown, 65 N. E., 908.
 " Milner vs. Bowman, 21 N. E., 1094; 119 Ind.,
 448.
 Md. N. Y., etc., Co. vs. Flack, 3 Md., 341.
 " Whitridge vs. Barry, 42 Md., 150.
 " Sonders vs. Home Soc., 20 At., 137; 72 Md.,
 511.
 Mass. Brown vs. Greenfield Assn., 53 N. E., 129.
 " Campbell vs. N. E. Mut., 98 Mass., 381.
 " Dixon vs. Nat. Life, 168 Mass., 48; 46 N. E.,
 430.
 " Mut. Life vs. Allen, 138 Mass., 31.
 " Palmer vs. Merrill, 6 Cush., 282.
 " Troy vs. Sargent, 132 Mass., 408.
 Mich. Prudential vs. Liersch, 81 N. W., 258.
 Miss. Murphy vs. Red, 64 Miss., 614; 1 So., 761.
 Neb. Chamberlain vs. Butler, 86 N. W., 481.

- N. J.....Trenton Mut. vs. Johnson, 24 N. J. L. (4 Zab.), 576.
- N. Y.....Cannon vs. Mut. Life, 29 Hun, 470.
- “Hogle vs. Guardian Life, 4 Abb. N. S., 347.
- “Glassey vs. Met. Life, 65 N. Y. St., 493.
- “Rawles vs. Amer. Mut., 27 N. Y., 282.
- “Olmstead vs. Keyes, 85 N. Y., 593.
- “Sabin vs. Phinney, 134 N. Y., 423.
- “St. John vs. Amer. Mut., 13 N. Y., 31.
- “Smith vs. National Ben., 123 N. Y., 85.
- “Steinbach vs. Diepenbrock, 158 N. Y., 24.
- “Vallton vs. Nat. Life, 20 N. Y., 32.
- N. D.....N. D. Insurance Law, Sec. 4612.
- Ohio.....Echo vs. Renner, 41 Ohio St., 232.
- R. I.....Clark vs. Allen, 11 R. I., 441.
- S. C.....Crosswell vs. Conn. Assn., 51 S. C., 103; 28 S. E., 200.
- Wis.....Bursinger vs. Bk. of Watertown, 30 N. W., 290; 67 Wis., 75.
- “Hurd vs. Doty, 86 Wis., 1.
- “Strike vs. Wis. Co., 70 N. W., 819; 95 Wis., 583.
- Eng.....Ashley vs. Ashley, 3 Sim., 149.
- Fed.....Robinson vs. U. S. Assn., 68 Fed., 825.
- “Lamont vs. Hotel, etc., Assn., 30 Fed., 817.
- U. S.....See Conn. Ins. Co. vs. Shaefer, 94 U. S., 457.

95

Assignee must have an Insurable Interest.

- Ala.....Ala. Gold Life vs. Mobile Mut., 81 Ala., 329; 1 So., 561.
- “Helmetag vs. Miller, 76 Ala., 183.
- “Stoelker vs. Thornton, 6 So., 680; 88 Ala., 241.
- Ind.....Franklin Ins. Co. vs. Hazzard, 41 Ind., 116.
- “Franklin Ins. Co. vs. Seffton, 53 Ind., 380.
- “Kessler vs. Kuhns, 27 N. E., 980.
- Kan.....Mo. Co. vs. McCrum, 12 Pac., 517; 36 Kan., 146.
- “Mo. Co. vs. Sturgis, 18 Kan., 93.
- Ky.....Basye vs. Adams, 81 Ky., 368.
- “Settle vs. Hill, 5 Ky. L. R., 691.

- Mich.....Lyon vs. Rolfe, 42 N. W., 1094.
 "Mich. Mut. vs. Rolfe, 76 Mich., 146.
 Mo.....Heusner vs. Mut. Life, 47 Mo. App., 336.
 Pa.....Gilbert vs. Moos, 104 Pa. St., 74.
 "Hartig vs. Reeves, 2 Pa. Sup. Ct., 545.
 "Hoffman vs. Hoke, 122 Pa. St., 377; 15 At.,
 437.
 "Keystone Mut. vs. Norris, 8 At., 638.
 "Ruth vs. Katterman, 112 Pa. St., 257; 3 At.,
 833.
 "Stambaugh vs. Blake, 15 At., 705.
 Tenn.....Clement vs. N. Y. Life, 46 S. W., 561; 101
 Tenn., 22.
 Tex.....Price vs. Sup. Lodge, 4 S. W., 633; 68 Tex.,
 361.
 "Shonfield vs. Turner, 12 S. W., 626; 75 Tex.,
 324.
 U. S.....Cammack vs. Lewis, 15 Wall., 643.
 "Warnock vs. Davis, 104 U. S., 775.
 See in this connection: Indiana Insur-
 ance Law, Sec. 130; Missouri Ins.
 Law, Sec. 7907; Pennsylvania Laws,
 1883, and Insurance Law of Illinois.
 (Assessment Insurance.)

96

Termination of Assignee's Insurable Interest does not invalidate the assignment.

- Fed.....Manhattan Life vs. Hennessy, 99 Fed., 64.

97

No particular form of Words need be used to make an assignment so long as a clear intent to assign is shown.

- Ill.....St Clair Soc. vs. Fietsam, 97 Ill., 474.
 "Swift vs. Ry. Assn., 96 Ill., 309.
 Me.....Garnsey vs. Gardner, 49 Me., 167.
 Miss.....Pass vs. McCrea, 36 Miss., 143.
 Mo.....Kimball vs. Donald, 20 Mo., 577.

98

If the Assignment is delivered, it is not necessary to also deliver the policy.

- Pa.....Scott vs. Dixon, 108 Pa. St., 6.
 Tex.....Burgess vs. N. Y. Life, 53 S. W., 602.
 Neale vs. Molineaux, I. Car. & K., 672.

99

Assignment need not be in writing, but in such cases the policy must be delivered.

- Md.....N. Y. Life vs. Flack, 3 Md., 341.
 Mass.....Hewins vs. Baker, 161 Mass., 320.
 Minn.....Hogue vs. Minn. Co., 59 Minn., 39.
 Mo.....Chapman vs. McIlwrath, 77 Mo., 38.
 N. J.....Trav. Ins. Co. vs. Brandt, 33 At., 1060.
 N. Y.....Marcus vs. St. Louis Mut., 68 N. Y., 625.
 S. C.....Macauley vs. Central Nat. Bk., 27 S. C., 215;
 3 S. E., 193.
 Tenn.....Hancock vs. Fidelity Mut., 53 S. W., 181.
 Tex.....Lord vs. N. Y. Life, 66 S. W., 290.

100

A Life Insurance Contract may be the subject of a gift causa mortis or inter vivos.

- N. J.....Trav. vs. Grant, 33 At., 1060.
 Tex.....Lord vs. N. Y. Life, 66 S. W., 290.
 See also:—
 Ala.....Lehman vs. Gunn, 27 So., 475.
 Ill.....Weaver vs. Weaver, 52 N. E., 338.

101

Where the contract requires the Consent of the Insurer to an Assignment, the parties to the Assignment cannot object because such consent was not obtained.

- Ky.....Embry's Adm. vs. Harris, 52 S. W., 958.
 ".....Lee vs. Murrell, 9 Ky. L. R., 104.
 Mass.....Hewins vs. Baker, 37 N. E., 441.
 Minn.....Hogue vs. Minn. Co., 60 N. W., 812.
 N. H.....Brown vs. Mansur, 64 N. H., 39; 5 At., 768.

102

Absence of Insurer's Consent to an Assignment, even when required, will not prevent assignee from receiving the proceeds.

- Mass.....Richardson vs. White, 44 N. E., 1072.
 N. Y.....Marcus vs. St. Louis Mut., 68 N. Y., 625.
 Tenn.....Mut., etc., Co. vs. Hamilton, 37 Tenn. (5 Sneed), 269.
 But see:—
 La.....Moise vs. Mut. Reserve, 13 So., 170; 45 La. Ann.
 Pa.....Nat. Mut. vs. Lupold, 101 Pa. St., 111.
 Fed.....Harmon vs. Lewis, 24 Fed., 97.

103

The Insurer may assign his interest in the insurance contract.

- Ala.....Helmetag vs. Miller, 76 Ala., 183.
 Mass.....Atlantic Mut. vs. Gannon, 60 N. E., 933.
 N. J.....Trav. Ins. Co. vs. Grant, 33 At., 1060.
 N. Y.....Miller vs. Campbell, 140 N. Y., 457.
 Ohio.....Eckel vs. Renner, 41 Ohio St., 232.
 Tenn.....Hancock vs. Fidelity Mut., 53 S. W., 181.
 U. S.....Roberts vs. Phoenix Life, 120 U. S., 86.

104

A Beneficiary may assign his interest in the insurance contract. (See 105.)

- Ind.....Damron vs. Penn Mut., 99 Ind., 478.
 La.....Succession of Richardson, 14 La. Ann., 1.
 Md.....Harrison vs. McConkey, 1 Md. Chan., 34.
 ".....Hewlett vs. Home, etc., 74 Md., 350; 24 At.,
 324.
 ".....N. Y. Life vs. Flack, 3 Md., 341.
 Miss.....Murphy vs. Red., 64 Miss., 614.
 Mo.....Baker vs. Young, 47 Mo., 453.
 ".....Charter Oak Life vs. Brant, 47 Mo., 419.
 N. Y.....Lawler vs. Nat. Assn., 31 N. Y., Supp., 875.
 ".....Ferdon vs. Canfield, 39 Hun., 571.
 ".....St. John vs. Amer. Mut., 13 N. Y., 31.
 ".....Valton vs. Nat. Loan Assn., 20 N. Y., 32.

- Ohio.....Eckel vs. Renner, 41 Ohio St., 232.
 Pa.....Cunningham vs. Smith, 70 Pa. St., 450.
 R. I.....Clark vs. Allen, 11 R. I., 439.
 Wis.....Archibald vs. Mut. Life, 38 Wis., 542.
 U. S.....Mut. Life vs. Armstrong, 117 U. S., 591.
 ".....Robinson vs. Mut. Ben., 16 Blatchf., 194.

105

In the absence of special statute, if a married woman has control of her property, and may transfer it, she may also transfer her interest in an insurance contract.

- Col.....Collins vs. Dawley, 4 Colo., 138.
 Conn.....Chapin vs. Fellowes, 36 Conn., 132.
 ".....Conn. Mut. vs. Berroughs, 34 Conn., 305.
 ".....Phoenix Life vs. Oppen, 58 At., 586.
 Ill.....Norwood vs. Gordon, 60 Ill., 253.
 ".....Pomeroy vs. Manhattan Life, 40 Ill., 398.
 Ind.....Damron vs. Pa. Mut., 99 Ind., 478.
 ".....Pence vs. Makepeace, 65 Ind., 345.
 Md.....Emerick vs. Coakley, 35 Md., 192.
 Mass.....Knickerbocker Life vs. Weitz, 99 Mass., 294.
 Mo.....Charter Oak vs. Brandt, 47 Mo., 419.
 N. J.....De Ronga vs. Elliott, 23 N. J. Eq., 486.
 Pa.....Brown's Appeal, 125 Pa. St., 303.
 R. I.....Sup. Assembly vs. Campbell, 17 R. I., 402.
 Tenn.....Scobey vs. Waters, 10 Lea., 551.

But see:

- Mass.....Unity Mut. vs. Dugan, 118 Mass., 219.

106

The following States have laws directly referring to the assignment of life insurance contracts by married women:

New Jersey, New York, Ohio and Wisconsin.

See:—

- N. Y.....Morschauser vs. Pierce, 72 N. Y., Supp., 328.
 ".....Dannhauser vs. Wallenstein, 62 N. E., 160.
 ".....Miller vs. Campbell, 140 N. Y., 457.
 ".....Spencer vs. Myers, 150 N. Y., 269; 44 N. E., 942.
 ".....Trav. Ins. Co. vs. Healy, 86 Hun., 524.
 ".....Eadie vs. Slimmon, 26 N. Y., 9.

- N.Y.....Barry vs. Equitable, 59 N. Y., 587.
 "Wilson vs. Lawrence, 76 N. Y., 585.
 "Brick vs. Campbell, 122 N. Y., 337; 25 N. E.,
 493.
 "Stokes vs. Ammerman, 121 N. Y., 337; 24 N.
 E., 819.
 N. Y.....Sherman vs. Allison, 80 N. Y. Supp., 148.
 Wis.....Ellison vs. Straw, 92 N. W., 1094 (before the
 statute).

107

Where the Assignment is a Wagering transaction, the assignee may hold as his own only the amount of the debt due him from the insured.

- Pa.....Cooper vs. Weaver, 11 At., 780.
 "Stambaugh vs. Blake, 15 Atl., 705.
 U. S.....Cammack vs. Lewis, 15 Wall, 643.
 "Warnock vs. Davis, 104 U. S., 775.

108

A Creditor Assignee under an Absolute Assignment may hold the entire proceeds as his own unless the assignment is a wagering transaction (107).

- Conn.....Bevin vs. Conn. Mut., 23, Conn., 244.
 Ind.....Amick vs. Butler, 111 Ind., 578; 12 N. E., 518.
 Minn.....Hale vs. Life, etc., Co., 68 N. W., 182.
 Miss.....Murphy vs. Red, 64 Miss., 614.
 N. Y.....Ferguson vs. Mut., 102 N. Y., 647.
 "Grattan vs. Nat. Life, 15 Hun., 74.
 "Steinbach vs. Diepenbrock, 158 N. Y., 24; 52
 N. E., 662.
 Pa.....Grant vs. Kline, 115 Pa. St., 618; 9 At., 150.
 "Ruth vs. Katterman, 112 Pa. St., 351.
 See sections 2764, 2766, of California
 Code.

109

Even though the Assignment be Absolute and Valid, a Creditor Assignee may hold only so much of the insurance proceeds as is necessary for his indemnity.

- Ala.....Culver vs. Guyer, 29 So., 799.

- Ala.....Helmetag vs. Miller, 76 Ala., 183.
 Cal.....Widaman vs. Hubbard, 98 Fed., 806.
 Ky.....Barber's Admr. vs. Larue's Assignee, 51 S.
 W., 5.
 Mich.....Met. Life vs. O'Brien, 92 Mich., 584.
 Mo.....Mutual Life vs. Richards, 72 S. W., 486.
 Tenn.....Rison vs. Wilkeson, 3 Sneed, 565.
 Tex.....Cawthorne vs. Perry, 13 S. W., 268.
 ".....Equitable vs. Hazlewood, 12 S. W., 621.
 ".....Lewy vs. Gillard, 13 S. W., 304.
 Va.....First Nat. Bk. vs. Speece, 37 S. E., 843.
 ".....Roller vs. Moore, 86 Va., 517; 10 S. E., 241.
 U. S.....Crotty vs. Union Mut., 12 S. C. R., 749.
 See California Code—sections 2764,
 2766.

110

An Absolute Assignment may be shown to have been made as Collateral Security.

- Mass.....Dickson vs. Nat. Life, 46 N. E., 430.
 Mich.....McDonald vs. Birss, 58 N. W., 357.
 Utah.....Jones vs. N. Y. Life, 50 Pac., 620.
 Va.....Roller vs. Moore, 86 Va., 512; 10 S. E., 241.
 See also:—
 N. J.....Lance vs. Bonnell, 43 At., 288.

111

Under an Assignment as Collateral Security, the assignee may hold as his own only so much of the proceeds as is necessary for his indemnity.

- Ga.....Exchange Bank vs. Loh, 31 S. E., 459.
 ".....Morris vs. Ga. Assn., 24 S. E., 378.
 Mich.....McDonald vs. Birss, 58 N. W., 359.
 Utah.....Jones vs. N. Y. Life, 50 Pac., 620.

112

Assignment may be set aside if procured by Fraud or Undue Influence.

- Ark.....Mente vs. Townsend, 59 S. W., 41.
 Conn.....Conn. Mut. vs. Westervelt, 52 Conn., 586.
 Md.....Whitridge vs. Barry, 42 Md., 140.

- Mich.....Mut. Ins. Co. vs. Wayne Sav. Bk., 68 Mich.,
 116; 35 N. W., 853.
 N. Y.....Barry vs. Brune, 8 Hun, 395; 71 N. Y., 261.
 "Barry vs. Equitable, 59 N. Y., 587.
 "Eadie vs. Slimmon, 26 N. Y., 9.
 "Fowler vs. Butterly, 78 N. Y., 68.
 Pa.....McCutcheon's Appeal, 99 Pa. St., 133.

113

Assignment may be set aside if made in Fraud of Creditors.

- Ind.....Rodwell vs. Johnson, 52 N. E., 798.
 Tex.....Burges vs. N. Y. Life, 53 S. W., 602.
 Fed.....Aetna Bank vs. Manhattan Life, 24 Fed., 769.

114

A Wife has an Insurable Interest in the life of her Husband.

- Conn.....Continental Life vs. Palmer, 42 Conn., 60.
 Ind.....Hutson vs. Merrifield, 51 Ind., 24.
 Mo.....Gambs vs. Covenant Mutual, 50 Mo., 44.
 "McKee vs. Phoenix Ins. Co., 28 Mo., 383.
 N. Y.....Baker vs. Union Mutual, 43 N. Y., 283.
 U. S.....Conn. Mut. vs. Schaeffer, 94 U. S., 457.
 "Washington, etc., Bank vs. Hume, 128 U. S.,
 195.

See also:—

- Ga.....Equitable Soc. vs. Patterson, 41 Ga., 338.
 Vt.....Currier vs. Continental Life, 57 Vt., 496.

115

A Husband has an Insurable Interest in the life of his Wife.

- Vt.....Currier vs. Continental Life, 57 Vt., 496.

116

A Partner has an Insurable Interest in the life of his Co-Partner.

- Conn.....Bevin vs. Conn. Mutual, 23 Conn., 244.

Mass.....Morrell vs. Trenton, etc., Co., 10 Cush., 282.
 N. J.....Trenton Mutual vs. Johnson, 4 Zab., 576.
 N. Y.....Hoyt vs. N. Y. Life, 3 Bosw., 440.
 U. S.....Conn. Mutual vs. Luchs, 108 U. S., 498.
 But see:—
 N. C.....Powell vs. Dewey, 123 N. C., 103, 105.

117

Bondsman has an Insurable Interest in the life of his Principal.
 Pa.....Scott vs. Dickson, 108 Pa. St., 6.

118

Bondsman has an Insurable Interest in the life of his Co-Surety.
 Eng.....Brandford vs. Saundres, 25 W. R., 650.

119

A tenant has an Insurable Interest in the life of his Landlord whose term is of indefinite duration.
 Fed.....Sides vs. Knickerbocker Life, 16 Fed., 650.

120

A Master has an Insurable Interest in the life of a Servant who is bound to him for a term.
 La.....Summers vs. U. S., etc., Trust Co., 13 La.
 An., 504.
 N. J.....Trenton Mutual vs. Johnson, 24 N. J., 576.
 N. Y.....Miller vs. Eagle Ins. Co., 2 E. D. Smith, 268,
 292.
 N. C.....Woodfin vs. Asheville, etc., Co., 6 Jones L.,
 558.

121

A Servant has an Insurable Interest in the life of a Master with whom he has a contract for a term.
 Eng.....Hebden vs. West, 111 W. R., 422.

122

A Child has an Insurable Interest in the life of his Parent.

- Me.....Mitchell vs. Union Life, 45 Me., 104.
 Mass.....Forbes vs. American Mutual, 15 Gray, 249.
 ".....Loomis vs. Eagle Life, 6 Gray, 396.
 N. Y.....Gratton vs. National Life, 15 Mun., 74.
 Pa.....Reserve Mutual vs. Kane, 81 Pa. St., 154.
 Va.....Valley Mut. vs. Terwalt, 79 Va., 421.
 But see:—
 Ill.....Guardian Mutual vs. Hogan, 80 Ill., 35.
 Ky.....Metropolitan Life vs. Blesch, 58 S. W. 436.
 Fed.....Life, etc., Co. vs. O'Neil, 106 Fed., 800.

123

Brothers and Sisters have no Insurable Interest in the lives of one another.

- Conn.....Bevin vs. Ins. Co., 23 Conn., 244.
 ".....Lewis vs. Phoenix Mutual, 39 Conn., 100.
 Ia.....Farmers' Bk. vs. Johnson, 91 W., 1074.
 Mo.....Reynolds vs. Prudential, 88 Mo. App., 679.
 But see:—
 Mass.....Lord vs. Dall, 12 Mass., 115.
 Mo.....Sternberg vs. Levy, 169 S. W., 1114.
 U. S.....Aetna Life vs. France, 94 U. S., 561.



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